

WINNEBAGO TRIBAL CODE

TITLE 7
HEALTH, SAFETY, AND WELFARE

ARTICLE 1
MENTAL HEALTH COMMITMENT ACT
(Revised March 9, 2011)

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(Revised March 9, 2011)

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(Enacted July 17, 1996)

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As adopted December 15, 2010
[TCR #11-29]

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7-101 Definitions.

1. "Alcoholic" means an individual who has lost the power of self-control or exhibits cognitive deficiencies, general confused thinking, or other manifestations of disorientation, which show an inability to make judgments about areas of behavior that do not directly relate to his/her alcohol consumption.
2. "Drug addict" means an individual who has a physiological or psychological dependence on a drug or drugs which he/she used in a manner not prescribed by a physician.
3. "Mentally ill individual" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. This term is not intended to include a mentally retarded or mentally deficient individual of significantly sub-average intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. Drug addiction and alcoholism do not per se constitute mental illness, although individuals suffering from these conditions may also be suffering from mental illness.
4. "Individual requiring treatment" means either:
 - a. An individual who is mentally ill, an alcoholic or a drug addict and who, as a result of such condition, can reasonably be expected within the near future to intentionally or unintentionally cause serious physical harm to him/herself, others or property and who has engaged in an act or acts or has made significant threats that are substantially supportive of this expectation; or
 - b. An individual who is mentally ill, an alcoholic or a drug addict and who, as a result of such condition, is unable to attend to his/her basic physical needs such as food, clothing, or shelter that must be attended to for him/her to avoid serious harm in the near future and who has demonstrated that inability by failing to meet those basic physical needs.
5. "Law enforcement officer" means a member of the Winnebago Police Department, a federal law enforcement officer or a state or county law enforcement officer duly cross-deputized by the Winnebago Tribe of Nebraska to assert law enforcement powers within the Winnebago reservation.
6. "Respondent" means the individual alleged to be mentally ill, an alcoholic or a drug addict in the proceedings. [TCR 93-96, 11-73]

7-102 Petition.

1. The petition for commitment shall be filed with the Court by a Public Health Service/Indian Health Service physician, registered nurse, mental health official, social services official, substance abuse counselor, Tribal prosecutor or an interested person. Any such petitioner must have reason to believe that the respondent is mentally ill, an alcoholic or a drug addict. The prosecutor shall represent the Tribe/petitioner or interested person.

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2. The petition may be supplemented by a supporting statement or affidavit by one individual, other than the petitioner, who has actual personal knowledge of the mental, alcohol or drug problem of the respondent. Such statement shall set forth the reason(s) for the proposed treatment and/or hospitalization.
3. Temporary detention hearing. Upon receipt and review of the petition and any statement or affidavit, the Tribal judge may, within his/her discretion, order reservation law enforcement officers to apprehend and place the respondent in protective custody until such time as a hearing on the matter can be held. Should such Tribal judge deem an emergency to exist, he/she shall order the detention or hospitalization of the respondent in an available facility in which the freedom of the respondent is least restricted and yet the respondent, other persons and/or property are adequately protected and the respondent may be properly evaluated. In the event that the respondent be detained or hospitalized, a probable cause hearing shall be held within seventy-two (72) hours to determine whether probable cause exists to continue detention of the respondent until such time as a full hearing in the petition can be held.
4. The respondent shall be served with a copy of the petition. The respondent may waive a hearing and proceed to treatment. [TCR 93-96, 11-73]

7-103 Counsel. The respondent shall have the right to an attorney at his/her own expense or, if indigent, counsel will be appointed to the extent that such is available. [TCR 93-96, 11-73]

7-104 Hearing.

1. A hearing on the petition shall be held within seventy-two (72) hours from the time of the commencement of any detention or hospitalization pursuant to Section 7-102(3) of this Article. Such hearing shall be a priority case. If the seventy-two (72) hour time period expires outside of the Court's operating hours, the hearing shall be held as soon as possible on the next day the Court is open.
2. When the respondent is not detained or hospitalized, a hearing shall be held within five (5) business days of the day on which the petition was filed.
3. The judge who presides over the full hearing shall:
 - a. Hold the hearing in the presence of the respondent or attorney;
 - b. Ensure that a complete record of the hearing is made and placed in the Court file;
 - c. Admit as evidence into record any statements or reports of physicians, psychiatrists, clinical psychologists or other medical, mental health and substance abuse practitioners and oral testimony introduced by interested parties either in support of or in opposition to the proposed treatment and/or hospitalization; and
 - d. In support of any Court-ordered disposition involving commitment to a facility for the purpose of inpatient treatment and/or hospitalization, ensure that the quantum of proof admitted and supportive of any such disposition is constituted by clear and convincing evidence that the respondent is an individual requiring treatment, as defined in Section 7-101 herein. [TCR 93-96, 11-73]

7-105 Disposition.

1. Upon completion of the full hearing, the Court may order any one or any combination of the following dispositions based upon the evidence admitted into the record:
 - a. Dismissal of the petition if the Court determines that the respondent is not an individual requirement treatment.
 - b. Commitment of the respondent to a facility, located within or outside of the exterior boundaries of the Winnebago Indian reservation, for the purpose of securing appropriate inpatient treatment and/or hospitalization.

- c. Participation by the respondent in a periodic outpatient alcohol or drug treatment program, with the extent and term of such participation to be determined by the alcohol or drug treatment center.
- d. When the Court orders inpatient treatment, hospitalization or outpatient alcohol or drug treatment meetings, the Court order shall be enforced by reservation law enforcement, with such enforcement to include arrest should the respondent fail to comply with such order. [TCR 93-96, 11-73]

7-106 Emergency Protective Custody.

- 1. A law enforcement officer may take a person into emergency protective custody if the law enforcement officer has probable cause to believe that a person is an individual requiring treatment within the meaning of Section 7-101(4)(a) of this Article and that the person might cause physical harm to himself, another or another's property before a petition can be filed and reviewed by the Tribal Court as provided for in Section 7-102(3) of this Article.
- 2. A person taken into emergency protective custody shall be placed in a secure mental health facility if possible. If placement in a secure mental health facility is not possible, the person shall be held in a detention facility, provided that such person shall be observed by a sworn officer or detention staff to ensure that he/she does not harm him/herself or others, or others do not harm him/her.
- 3. The law enforcement officer who placed the person in emergency protective custody shall file a request with the Tribal prosecutor to file a petition for commitment in regard to the person pursuant to Section 7-102(1) of this Article. This request shall be filed no later than the next business day following commencement of the emergency protective custody action. The request shall set forth the facts upon which the law enforcement officer reached his/her determination of probable cause for the emergency protective custody.
- 4. If the Tribal prosecutor deems the person to not be an individual requiring treatment within the meaning of Section 7-101(4)(a), the Tribal prosecutor shall decline to file a petition and that person shall be released immediately. If the Tribal prosecutor deems the person to be an individual requiring treatment within the meaning of Section 7-101(4)(a), he/she shall file a petition pursuant to Section 7-102(1) of this Article.
- 5. A determination of temporary detention by the Tribal judge pursuant to Section 7-102(3) is unnecessary if the person has been put in emergency protective custody pursuant to this Section. The matter shall proceed to a probable cause hearing within seventy-two (72) hours of the filing of the petition for commitment to determine if ongoing detention is appropriate pending a full hearing on the petition. [TCR 93-96, 11-73]

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7-300 Definitions. For the use in this Article, the following terms are defined as:

1. "Abandon" means any person in possession of an animal who knowingly refuses to provide care for the animal as defined by this Article, including failing to reclaim an animal from Animal Control Services.
2. "Animal" means any living reptile, amphibian, bird, or non-human mammal, both domestic and wild.
3. "Animal Control" or "Animal Services Officer" means any person designated by the Winnebago Tribe of Nebraska, Village of Winnebago, State of Nebraska, a municipal government or a humane society as a law enforcement officer who is qualified and authorized to perform such duties under the Winnebago Tribal Code, Village Ordinances, and/or applicable State statutes.
4. "At heel" means under the voice of control and within fifteen feet of the owner or person in custody of the animal.
5. "At large" means any animal found off the premises of its owner and not confined within a house, building, or other secured enclosure, kennel, veterinary hospital, or not restrained by the owner or responsible person by leash or lead, or "at heel" beside a person and obedient to that person's command.

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6. “Breeder” means a person who breeds animals for sale, trade, or barter and holds a permit to do so from the Winnebago Tribe of Nebraska pursuant to Section 7-303 of this Article. Breeder shall also mean any person who maintains an unaltered (unsterilized) dog or cat and breeds such animals for any consideration of profit, fee, or compensation.
7. “Cat” means both female and male, which are members of the feline or cat family (*Felis Catus*), whether neutered or not.
8. “Dangerous Animal” means any animal, which according to the records of the appropriate authority, has (a) inflicted injury on a human, domestic animal, or livestock without provocation on public or private property; or (b) killed a domestic animal without provocation while off the owner’s property; or (c) been previously found to be Potentially Dangerous, the owner having received notice of such, and the animal subsequently aggressively bites, attacks, or endangers the safety of humans, domestic animals, or livestock.
9. “Dart” means the process whereby a drug of a sedative nature is delivered to and injected into an animal by means of projectile shot from a rifle or gun, for the purpose of subduing or rendering an animal unconscious for capture.
10. “Dog” means both female and male, which are members of the canine or dog family, whether neutered or not.
11. “Enclosure” means a fence or structure forming or causing an enclosure suitable to adequately confine any animal. Any animal deemed vicious, dangerous, or potentially dangerous must meet enclosure requirements as outlined in Section 7-324.
12. “Exotic Animal” means an animal that is not indigenous to the United States, excluding captive bred species of common cage birds, or any other animal, fish, or reptile that is commonly sold or traded as a companion animal or household pet.
13. “Feral” means any animal that was once domesticated but has returned to a wild state. An animal need not be dangerous or vicious to be considered “feral.”
14. “Health Department” and “Health Officer” means the Winnebago Tribal Health Department or a designee employee of the same department.
15. “Injury” means any physical injury that results in need for professional medical treatment.
16. “Kennel,” “Cattery,” or “Pet Shop” means any premises wherein any person that engages in the business of boarding, breeding, buying, letting for hire, raising, training for a fee, or selling dogs, cats, birds, rodents, reptiles, fowl, fish, or other small animals for profit, whether operated separately or in conjunction with another business enterprise.
17. “Livestock” means any animal ordinarily used for agricultural purposes including but not limited to horses, ponies, mules, burros, jacks and jennies, cows, bulls, calves, heifers, sheep, goats, swine, hogs or pigs but excepting pot-bellied pigs kept as household pets in a sanitary manner and otherwise in accordance with the provisions of this Article.
18. “Muzzle” means when required by this Article, a device covering the upper and lower jaws of an animal and made of appropriate material with sufficient strength to restrain the animal from biting. No such muzzle employed shall be made from material or maintained on the animal in any manner so as to cut or injure the animal.
19. “Nuisance Animal” means any animal, which as a result of its actions, causes a human being any loss of rights or privilege.
20. “Owner” means any person or persons, firm, association or corporation or parent of a child that owns, keeps, shelters, possesses or harbors one or more animals. An animal shall be considered harbored if it is fed or sheltered for three consecutive days or more.
21. “Potentially Dangerous Animal” means any animal which, when unprovoked:
 - a. Bites a human, domestic animal, or livestock either on public or private property; or
 - b. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any animal that has a documented history to attack unprovoked, cause injury, or has otherwise threatened the safety of humans or domestic animals.

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22. “Severe Injury” means any physical injury that results in disfiguring lacerations requiring or that will require multiple sutures or cosmetic surgery, or one or more fractured bones, or that creates a potential threat to the life or health of the victim.
23. “Stray” means any animal which does not have affixed to it a collar with an identification tag with owner’s name, address, and phone number and a current Winnebago Tribe of Nebraska license tag, and/or identifying, traceable tattoo or microchip.
24. “Tether” means a rope, chain or cable of appropriate strength that is firmly anchored to the bed of an open bed pickup truck or similar vehicle in at least two places. A tether is used to restrain the animal and is fastened to the animal by means of a harness and is to be the appropriate length as to afford the animal freedom to move about the vehicle, but to restrict the animal to a set radius to prevent it from reaching either the side or the rear of the vehicle so that the animal cannot be thrown, fall from, or jump from the vehicle.
25. “Tribe” means the Winnebago Tribe of Nebraska.
26. “Vaccination” means an injection of any vaccine for rabies approved by the state veterinarian, and administered by a licensed veterinarian or agent of the Tribal Health Department, or a public clinic, which may be established for this purpose.
27. “Vicious Animal” means:
 - a. Any animal which, without provocation, approaches in a manner of attack, bites or otherwise inflicts severe injury on a human being, domestic animal, or livestock on public or private property;
 - b. Any animal with known propensity, tendency or disposition to attack without provocation human beings, domestic animals or livestock;
 - c. Any animal owned or harbored primarily or in part for the purpose of animal fighting or any animal trained for animal fighting;
 - d. Any animal which has been previously found to be dangerous, the owner having received notice of such, and the animal again aggressively bites, attacks, or endangers the safety of humans, domestic animals or livestock;
 - e. Notwithstanding the above definition, no animal shall be declared vicious, dangerous, or potentially dangerous if the person attacked or bitten by said animal was teasing, tormenting, abusing, or assaulting the animal or was committing or attempting to commit a crime; or if the animal was protecting its young; and
 - f. Any dog that has been deemed to be a “vicious animal” solely because of its breed or other inherent characteristic as identified by this Code.
28. “Wild Animal” means any living member of the animal kingdom, including those born or raised in captivity, except the following: human beings, domestic dogs, (excluding hybrids with wolves, coyotes, or jackals), domestic cats (excludes hybrids with ocelots or margays), livestock, and captive bred species of common cage birds. Any domestic animal that has become feral shall also be considered a “wild animal.” [TCR 90-73, 08-56, 11-70]

7-301 Offices designated.

1. The Office of Environmental Health of the Winnebago Tribe of Nebraska Health Department is designated as the official agent for the Winnebago Tribe for the purpose of issuing animal licenses, issuing permits, and collecting fees therefore pursuant to the provisions of this Article. The Environmental Health Office shall work in coordination with the Animal Control Department in issuing licenses and maintaining animal control records.
2. The Chief Administrative Officer of the Winnebago Tribe of Nebraska shall have the authority to enter into agreements with third parties for collection of license fees, for capture, transport, impoundment and disposition of animals found within the Winnebago Reservation and for other purposes relating to enforcement of this Article. [TCR 90-73, 08-56]

7-302 Licensing of dogs and cats. It shall be unlawful for the person to own, keep, or harbor a dog or cat within the boundaries of the Winnebago Reservation, including the Village limits of Winnebago, without having first registered the animal with the Tribal Environmental Health Office and paid the annual license fee as stated in the fee schedule established by the Environmental Health Office for all dogs and cats six (6) months of age or older:

1. Within thirty (30) days after every dog, cat or other domesticated animal reaches six months of age, or is under six months and is no longer with its dam, every owner of such dog, cat or other domesticated animal shall procure a Tribal animal license each year from the Environmental Health Office of the Winnebago Tribe.
2. To secure a license, an owner must complete a registration form, provide proof of current legal rabies vaccination, and pay a registration fee as established by the Environmental Health Office each year.
3. Upon registration, the Environmental Health Office shall furnish the owner of the dog or cat with a tag of distinctive design with the serial number of the dog or cat. The Environmental Health Office shall keep this serial number on file.
4. All licenses shall expire one year from the date of issuance.
5. Animal licenses are non-transferable.
6. Upon the death of the dog or cat, the owner shall advise the Environmental Health Office which shall void the registration of the animal.
7. Proof of registration must be provided by the animal owner upon demand by an Animal Control Officer or other law enforcement officer.
8. Registration fees collected by the Environmental Health Office shall be used to help defray the costs of the administering the program, including purchase of vaccines, tags and other supplies. [TCR 90-73, 08-56]

7-303 Breeder permit. A breeder's or kennel permit may be issued to those applicants that satisfy the following criteria:

1. The person intends to keep the animals for purposes of breeding and selling the animals as household pets or operates a business providing temporary boarding to other person's household pets.
2. The person maintains and provides for each animal in its possession the standards of housing, care and feeding as set forth in Sections 7-315 and 7-339.
3. In the case of a breeder permit, the person shall also demonstrate, either through education or experience, knowledge in animal breeding or employs and continuously employs such a person as part of a business. [TCR 11-70]

7-304 Rabies certification of vaccination required. All dogs, cats, and other domesticated animals susceptible to rabies within the boundaries of the Reservation and Village shall be vaccinated against rabies by an accredited veterinarian, Animal Control or Environmental Health Officer. Proof of current rabies vaccination in the form of a tag shall be provided by the owner upon registration of the animal. [TCR 90-73, 08-56]

7-305 Fee waiver. All owners of seeing eye dogs, hearing ear dogs or assistance dogs or other such dogs being used to aid sensory impaired persons or other persons who, upon medical advice, require the use of a service dog, shall not be required to pay an annual license fee, but shall be required to obtain a registration license tag. [TCR 08-56]

7-306 Display of tag.

1. The tag described in Section 7-304 must be attached by the owner to a substantial collar during the term of the license or be displayed by the owner upon demand by an Animal Control Officer or other Law Enforcement Officer.
2. Dogs in fenced exercise yards, on pickets, in buildings, automobiles or under effective control for exercise, work or training will not be required to wear tags or collars, or leashes, if the stated conditions of training, work or exercise are incompatible with the wearing of such articles. [TCR 90-73, 08-56, 11-70]

7-307 Transfer or change of ownership. When the permanent ownership of a dog, cat or other domesticated animal is transferred, the new owner shall, within thirty days of the date of change of ownership, make application for a new license as provided in Section 7-302, regardless of whether or not the dog, cat or other domesticated animal was previously licensed under the provisions of Section 7-302, and shall pay the full annual license fee. [TCR 90-73, 08-56]

7-308 Duplicate tag. Upon the filing of an affidavit that the license has been lost or destroyed, the owner may obtain another tag upon payment of a replacement fee as set by the Environmental Health Department. The officer shall enter the new number assigned in the license record. [TCR 90-73, 08-56]

7-309 Removal of license tags. It is unlawful for any person who is not the owner or the agent of such owner or an officer of the Winnebago Tribe of Nebraska or its agent, acting in an official capacity to remove a license tag from a dog or cat prior to the expiration of the license. [TCR 90-73, 08-56]

7-310 At large prohibited. The owner of an animal shall at all times restrain such animal to prevent it from running at large within the boundaries of the Village of Winnebago. An owner of an at-large animal shall be subject to penalty as set forth under this Article. [TCR 90-73, 08-56]

7-311 Spay and Neuter.

1. All dogs and cats shall be spayed or neutered, as the sex may be, by their owner within thirty (30) days of the owner coming into possession of the dog or cat. Should an owner fail to comply with this Section, Tribal or Village authorities are authorized to seize the dog or cat and have a licensed veterinarian spay or neuter the animal at the owner's expense.
2. If in the opinion of a licensed veterinarian the spaying or neutering procedure is either unnecessary or dangerous to the animal due to age or other condition, no compliance with this Section is required.
3. The requirements of this Section shall apply only after the dog or cat has reached six months of age.
4. This Section shall not apply to livestock or animals owned by a person holding a breeder's permit pursuant to this Article. [TCR 11-70]

7-312 Impoundment and ticketing.

1. An animal found at large within the Village boundaries shall be seized and impounded and, at the discretion of the Law Enforcement Officers, Tribal Conservation Officer, or Animal Control Officer, a citation and/or complaint to appear before the Winnebago Tribal Court to answer charges made thereunder may be served upon the owner.
2. The Animal Control Services Officers or assistants shall take into custody any animal that is not in compliance with Sections 7-302, 7-304, or 7-310. Law Enforcement Officers, Tribal Conservation Officers, or Animal Control Officers shall impound such animal.

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3. Unrestrained dogs and nuisance animals may be taken by the Law Enforcement Officers, Tribal Conservation Officers, or Animal Control Officers and impounded in an animal shelter and/or be confined in a humane manner. In the case of animals causing a noise problem and after owner of such animal(s) has been duly notified twice that the problem needs correcting, and such correction has not been put in place, nuisance animal(s) can then be impounded and a notice left at the owner's residence so as to provide the owner with instructions for reclaiming the animal(s).
4. Impounded animals shall be kept for a period of not fewer than five working days, including one Saturday, thereafter kept at the discretion of Animal Control Services.
5. If, by license tag or other means, the owner of an impounded animal can be identified, the Animal Control Officer shall immediately upon impoundment notify the owner by telephone or certified mail, but within two days that, upon payment of impoundment fees, plus cost of food and care, the animal will be returned.
6. Any animal not reclaimed by its owner within three business days shall become the property of the Animal Control Services Program and shall be placed for adoption in a suitable home or humanely euthanized by sodium pentobarbital. The owner is responsible for payment of any fees and/or fines accrued by the animal as outlined in this Article.
7. Upon an owner's conviction of a fourth violation of Section 7-310 involving an unsterilized animal(s), that animal may be sterilized at the owner's expense by a licensed veterinarian of the Animal Control Service, Law Enforcement Officer, Tribal Conservation Officer or Winnebago Tribal Health Department or its designee employee of the same department's choosing.
8. The shelter supervisor shall keep complete and accurate records of the care, feeding, veterinary treatment, and disposition of all animals impounded at the shelter.
9. The owner of an impounded animal who refuses to reclaim his/her animal(s) may be proceeded against for abandonment under the provisions of Section 7-314(5). [TCR 90-73, 08-56, 11-70]

7-313 Disposition of animals.

1. After the expiration of the applicable impoundment period or quarantine, except as otherwise provided in this Article, an unredeemed animal, whether licensed or unlicensed, may, at the discretion of the Animal Control Officer, be disposed of in a humane manner.
2. During the applicable impoundment period or quarantine, if the animal appears to be suffering from rabies or infected with disease, or is mortally injured, an unredeemed animal, whether licensed or unlicensed, may, at the discretion of the Animal Control Officer, be disposed of in a humane manner.
3. If the animal is injured or destroyed because it is vicious, the Animal Control Officer or the Conservation Officer shall dispose of the animal. If other persons destroy an injured or vicious animal, the Animal Control Officer or Conservation Officer shall be contacted who shall dispose of the animal.
4. If the animal is found dead, the Animal Control Officer or Conservation Officer shall dispose of the animal.
5. In the event that the animal has bitten a person, the Health Officer must be consulted before the animal is disposed of.
6. Disposition of injured or diseased animals shall be at the discretion of Animal Control.
7. No civil liability shall arise where a suffering animal is humanely destroyed. [TCR 90-73, 08-56]

7-314 General prohibitions and duties.

1. No person shall aid or cause any animal whether owned by such person or not, to escape confinement or impoundment, whether such confinement or impoundment be upon such person's property or that of another, by opening any gate, door or window, by making an opening in any fence, enclosure or structure, by unleashing such animal, or by any other means whatsoever.

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2. It shall be prohibited for any person to permit or allow an animal owned by that person or under that person's custody or control to defecate upon public property, park property, public right-of-way, or the property of another, unless such person shall immediately thereafter clean up, remove and dispose of the feces so deposited.
3. It shall be the duty of every person owning or having the custody and control of an animal to physically restrain the animal within an enclosure or upon a leash when such animal is left unattended outside or is not at heel. The animal must be restrained so as to prevent the animal from leaving the premises of its owner or from coming in contact with public right-of-way or the property of another.
4. It shall be prohibited for any person in any manner to interfere with any employee or designated representative of the Winnebago Tribe so as to hinder, delay or prevent his/her executing his/her duties pursuant to this Section.
5. No person shall abandon any animal within the Village limits of Winnebago or so that the animal may find its way into the Village limits of Winnebago except the person may deliver the animal to another person who will accept ownership and custody, or the person may deliver the animal to an animal shelter. [TCR 08-56]

7-315 Animal care; animal cruelty.

1. All animals, must be provided with appropriate shelter and a safe, non-injurious environment, per Federal Animal Welfare Act Guidelines. Shelters and enclosures, whether temporary or permanent, must be constructed so that they are the appropriate size, strength, and material that allows the animal to stand, stretch, turn around, and lie down freely. The shelters, enclosures, and fenced areas for animals must be kept free of hazards such as trash, sharp edges, protruding nails, broken or splintered wood, metal or glass shards, machinery, loose wires, or any other material that may cause injury.
2. No person shall give away any live animal, fish, reptile, or bird as a prize for or as inducement to enter any contest, game, or other competition or to induce a sale, or as an inducement to enter into any business agreement whereby the offer was for the purpose of attracting trade.
3. Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible, and shall immediately report such injury or death to the animal's owner. In the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency or to Animal Control Services.
4. No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose on his own property common rodent poison mixed only with vegetable substances.
5. No person shall fail to provide his animals with sufficient, good, wholesome and nutritious food, potable water in sufficient quantities, proper air, shelter which provides protection from the weather which includes four sides with opening, roof and floor; veterinary care when needed to prevent suffering, and humane care and treatment.
6. No animal may be kept on flooring of wire grid.
7. No person shall beat, cruelly ill-treat, torment, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any dogfight, cockfight, bullfight, or other combat between animals and/or humans.
8. No owner, keeper, or harbinger of an animal shall abandon such animal.
9. No person shall transport or carry any animal by motorized means unless the animal is safely enclosed within the vehicle or trailer, or enclosed in a portable kennel, crate, or dog box designed for this purpose, which is then fastened by a secure and appropriate means to the bed or the chassis of the vehicle. Dogs may be transported in open beds of pickup trucks provided they are secured in the vehicle by means of a humane cross tether and/or harness as set forth in Section 7-

- 300(23). In all cases where animals are transported by motorized vehicles, it must be in a safe and humane manner that will prevent the animal from falling from, being thrown from, or jumping from the motorized vehicle or trailer being pulled by such.
10. No person shall confine any animal in a parked vehicle if the outside air temperature is higher than 80 degrees Fahrenheit, unless the vehicle is running and the air conditioner is working properly. Animal Services Officers or other Law Enforcement Officers shall not be liable for any damage resulting to the vehicle when such confined animals must be removed for their safety and well being.
 11. In addition to the above provisions, animal cruelty shall be prohibited and punishable as set forth in Title III, Section 3-754 of the Winnebago Tribal Code. [TCR 08-56]

7-316 Release or adoption of animals. Animals not claimed by the owner within a prescribed period of time become the property of Animal Services and may be placed by Animal Services with a responsible potential owner who will provide a suitable home for the animal(s) in compliance with this Article. If such person chooses not to keep the animal(s), the animal(s) must be returned to Animal Services. Once an animal has become the property of Animal Services, ownership of such animal may never be transferred to persons representing medical laboratories, or any other entity for experimental process. Animal Services does not guarantee the health or temperament of any animal adopted from the shelter. [TCR 08-56]

7-317 Release of unsterilized animals. It shall hereafter be unlawful for any pound, shelter, or humane organization to release any unsterilized animal to a new owner unless a contract to spay or neuter such animal has been signed by the person acquiring the animal. A licensed, accredited veterinarian shall perform the sterilization by the date stipulated. However, upon medical advice of a licensed, accredited veterinarian, the owner may request and receive an extension of time up to thirty (30) days. A copy of the signed contract shall be kept on file at the office of Animal Services. The signed contract shall be binding, and failure to comply is unlawful. In such case, the animal described therein shall be returned to the releasing agency upon demand. Ownership of said animal reverts to the releasing agency, and no claim may be made to recover expenses incurred for maintenance of the animal, including the initial procurement cost. [TCR 08-56]

7-318 Number of animals.

1. It shall be unlawful for any person to own, keep, or harbor more than five (5) dogs and/or cats over the age of 16 weeks, or more than 10 common cage birds over the age of 12 weeks within the limits of the Village of Winnebago.
2. It shall be unlawful for any person to own, keep, or harbor more than eight (8) dogs and/or cats over the age of 16 weeks, or more than 10 common cage birds over the age of 12 weeks within the boundaries of the Winnebago Reservation.
3. This provision shall not apply to proprietors of animal hospitals and veterinarians when such animals are kept upon premises used by such business. This provision shall not apply to owners of dogs, cats, or common cage birds who are breeders of such or kennel operators, who hold a permit issued pursuant to Section 7-303.
4. Keeping on the premises more than five (5) and eight (8) dogs and/or cats over the age of 16 weeks or more than 10 common cage birds over the age of 12 weeks without permit shall be prima facie evidence of violation of this Section.
5. Any person found to be in violation of this Section of this Article shall, at the discretion of Animal Services, law enforcement officers, and Tribal conservation officers have a period of not less than ten (10) days or more than ninety (90) days to reduce the number of such animals through legal channels.
6. Any dog or cat under the age of 16 weeks, or common cage birds under the age of twelve (12) weeks shall not count toward the five (5) and eight (8) animal limit of this Section.

7. Any number of dogs and/or cats, the behavior of which collectively causes a nuisance as set forth in Section 7-327, shall be collectively considered “nuisance animals.” [TCR 08-56, 11-70]

7-319 Non-indigenous birds. All non-indigenous birds must be banded according to federal regulations. [TCR 08-56]

7-320 Impoundment fees. There shall be a minimum charge of forty dollars (\$40.00) for each animal taken and impounded on the first occasion an animal is impounded; there shall also be a fee of three dollars (\$3.00) per day for impoundment for up to five days if not suspected rabid, or four dollars (\$4.00) per day up to fifteen days if suspected rabid. The fees shall be paid to the Winnebago Tribe of Nebraska, or other designated entity which provides the services herein pursuant to Section 7-301(2). Civil penalties and court costs are addressed in Section 7-345 and are not “impoundment fees” within the meaning of this subsection. [TCR 90-73, 08-56, 11-70]

7-321 Redemption.

1. Any animal held or impounded at the animal control facility may be redeemed to the owner thereof upon:
 - a. Proof of ownership;
 - b. Payment of the board and keep fee, impoundment fee, and any other related costs incurred by the Winnebago Tribe or other designated entity;
 - c. Presentation of the Tribal license which shall not be issued until proof of a current rabies vaccination is presented; and
 - d. Showing proof in the form of a certificate issued and signed by a licensed veterinarian or the health officer that such animal has been properly vaccinated for rabies, if required by law, or by posting a twenty dollar (\$20.00) vaccination bond which shall be refunded if a rabies vaccination is obtained.
2. Application for vaccination bond redemption and for refund of the bond must be made within five business days of the posting of the bond. Failure of the owner to redeem such bond shall be prima facie proof that vaccination has not been obtained as required by this Article.
3. For the purposes of this Section, the Law Enforcement Officer, Conservation officer, or Animal Control Officer may give written notice to the owner personally, by posting a written notice at the owner’s residence, or by mail. [TCR 90-73, 08-56]

7-322 Injured animals at large.

1. In the event that an injured animal, licensed pursuant to this Article, is found at large, the Law Enforcement Officer, Conservation Officer or Animal Control Officer may cause the animal to be darted, if necessary, and may take the animal into custody.
2. In the event the injured animal is unlicensed, or in the event that the Law Enforcement Officer, the Conservation Officer, or the Animal Control Officer is unable to determine the ownership of the animal, or is unable to contact the owner, or should the owner refuse to either take custody of such injured animal or cause it to be transported to a veterinarian, the Law Enforcement Officer, Conservation Officer or the Animal Control Officer shall transport such animal to the nearest available veterinarian for treatment.
3. If an injured animal at large cannot be darted and it displays vicious tendencies which would make its capture by any other means unduly hazardous, the Law Enforcement Officer, Conservation Officer or the Animal Control Officer may cause the immediate destruction of such animal.
4. In the event that an animal, if found at large, is so seriously injured as to make its recovery unlikely, the Law Enforcement Officer, Conservation Officer, or the Animal Control Officer may,

in his/her discretion, immediately destroy such animal in a humane manner in the interest of humane treatment.

5. In the event that the Law Enforcement Officer, Conservation Officer, or Animal Control Officer transports an injured animal to the nearest veterinarian pursuant to the foregoing, he/she shall thereupon offer to give custody of said animal to the veterinarian for treatment at the veterinarian's cost. In the event that the veterinarian refuses to take custody of such animal, or advises that it would be humane to destroy it, the Animal Control Officer shall be directed to destroy said animal as expeditiously as possible in the interest of humane treatment.
6. After an animal has been humanely destroyed under this Section, the animal shall be subject to autopsy by local or state health officials to determine the cause of said animal's injuries or viciousness.
7. Upon taking an injured animal into custody or destroying an animal pursuant to this Section, the Law Enforcement Officer, Conservation Officer or Animal Control Officer shall notify in writing the animal's owner of its location and condition. Upon being so notified, the owner of such animal shall either immediately take custody of such animal or cause the animal to be transported to a veterinarian. [TCR 08-56]

7-323 Confinement of animals. From and after the passage of this Article, any person owning animals, whether vaccinated or unvaccinated, licensed or unlicensed, shall confine such animal on owner's property within an adequate fence or enclosure, or within a house, garage or other building. Animals shall not be tied or chained to doghouse or other stationary objects for any period of time exceeding twelve hours. [TCR 08-56]

7-324 Dog pens. Outdoor dog pens shall be located fifty (50) feet from any dwelling, other than the person's owning or controlling the dog. There shall be at least one hundred fifty (150) square feet in such pen for each dog, over six (6) months of age, kept therein. [TCR 08-56]

7-325 Conditions of pens and premises.

1. It shall be unlawful for any person keeping or harboring animals to fail to keep the premises where such animals are kept free from offensive odors to the extent that such odors are disturbing to any person residing within reasonable proximity of said premises. It shall be unlawful to allow premises where animals are kept to become unclean and a threat to the public health by failing diligently and systematically to remove all animal waste from the premises. It shall be unlawful to allow animals on premises where animals are kept to become infested with ticks, fleas or other vermin, by failing to diligently and systematically apply accepted methods of insect and parasite control.
2. Birdcages must be kept free from drafts and sudden chills. Cages must be cleaned daily to avoid airborne diseases to persons and other birds. Birds must have a constant supply of potable water and wholesome food appropriate to the particular species. No person may have an outside aviary unless he/she is a licensed rehabilitator. Outside aviaries must follow state and federal guidelines and have the approval of Animal Services. [TCR 08-56]

7-326 Animal bites.

1. Any animal which has bitten a person is a rabies suspect, and the owner or custodian shall immediately release such animal for quarantine confinement in a veterinary hospital approved by the Tribe or at Animal Services for a period of ten (10) days. Such quarantine may also be carried out within an enclosure approved by Animal Services.
2. When any animal has bitten, scratched, or otherwise attacked a person, the person or anyone having knowledge of such incident shall immediately notify Animal Services.

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3. The animal may be quarantined for a period of at least (10) days at the expense of the owner, or ownership may be relinquished, and the animal euthanized, and its head taken to the State/Tribal Health Department for a pathological examination.
4. The quarantine may be on the premises of the owner at the discretion of and under supervision of Animal Services if an appropriate/suitable place is available. Unclaimed stray animals may be humanely euthanized within twenty-four (24) hours or one (1) working day and the head removed and taken to the State/Tribal Health Department for pathological examination. [TCR 08-56]

7-327 Nuisance animals. Owners of nuisance animals shall be subject to fine as set forth under this Article. Nuisance animals are any animals which infringe upon the rights of another animal or a person, or:

1. Molest passersby or passing vehicles;
2. Trespass on school grounds;
3. Are repeatedly at large;
4. Damage private or public property;
5. Bark, whine, or howl in an excessive, continuous, or untimely fashion;
6. Cause fouling of the air by odor and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where animal is kept or harbored; or
7. Interfere with refuse collection or other service personnel.

For purposes of this Section, each day that a violation occurs shall be considered a separate violation, and if a separate citation is issued for each violation, each such separate violation may be penalized separately. [TCR 08-56]

7-328 Dangerous animals. It shall hereafter be unlawful for any person, to keep within the corporate limits of the Village and Reservation boundaries of Winnebago, Nebraska, any dangerous animal, unless such animal shall be secured and maintained as set forth in Section 7-332. [TCR 08-56, 11-70]

7-329 Determination of vicious animal, dangerous animal, potentially dangerous animal; notice to owner.

1. The Office of Animal Services shall be responsible for determining whether an animal is vicious, dangerous, or potentially dangerous. The Animal Services department shall consider the overall behavior of the animal in making this determination, including whether the animal has engaged in one or more attacks that caused severe injury or property damage.
2. When, in the judgment of Animal Services, any animal is determined to be a Vicious Animal, Dangerous Animal or Potentially Dangerous Animal, Animal Services shall give notice of said determination to the owner who shall forthwith comply with the provision of this Section concerning such determination. After notice to the owner or if after documented diligent effort, no owner can be located, to protect the public from imminent danger to persons or property, at the discretion of Animal Services, such animal may be humanely destroyed without regard to any time limitation otherwise established herein.
3. No animal shall be declared Vicious, Dangerous, or Potentially Dangerous if a domestic animal which was bitten or attacked was teasing, tormenting, abusing or assaulting the animal. No animal shall be declared vicious if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault or if the animal was protecting its young. [TCR 08-56]

7-330 Vicious dogs.

1. Vicious dogs, as defined in this Section, are hereby banned from the boundaries of the Winnebago Reservation and may not be owned or kept within the Winnebago Reservation boundaries.
2. Dog breeds identified in this Section are hereby deemed to be vicious and may not be owned or kept within the Winnebago Reservation. Breed specific dogs are defined as any of the following:
 - a. American Pit Bull Terrier.
 - b. Staffordshire Bull Terrier.
 - c. American Staffordshire Terrier.
 - d. Rottweiler.
 - e. Doberman.
 - f. Wolf dog/hybrid.
 - g. Any dog whose sire or dam is a dog of a breed, which is defined in this Section.
 - h. Any dog whose owner registers, defines, admits, or otherwise identifies said dog as being of a breed identified in this Section.
 - i. Any dog conforming, or substantially conforming to the breed of American Pit Bull Terrier, American Staffordshire Terrier, or Staffordshire Bull Terrier as defined by the United Kennel Club or American Kennel Club.
 - j. Any dog which is of the breed commonly referred to as “pit bull” and commonly recognizable and identifiable as such. [TCR 08-56]

7-331 Appeal procedure. Although an appeal of a vicious animal determination will not stay such determination, said owner of a vicious animal may appeal determination by filing a Notice of Appeal with the Winnebago Tribal Court within five (5) days thereof. No animal found to be vicious pursuant to this Article shall be destroyed or otherwise disposed of until the appeal period has expired and/or final disposition of any appeal filed pursuant to this Section. The animal shall however be impounded during the appeal period and while any appeal is pending with non-refundable costs of impoundment to be paid by the owner. [TCR 08-56]

7-332 Requirements for dangerous animals; penalties.

1. The following conditions are required for all owners of dangerous animals:
 - a. Confinement. Dangerous animals must be confined in an adequate enclosure. An enclosure in which a dangerous dog or animal is kept must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the ground beneath the gate shall be secured by embedded posts and the sides must be embedded into the ground no less than two (2) feet, unless such pen has a concrete bottom in which case the sides need only be embedded two (2) inches deep into the concrete. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition. Any stationary enclosure or pen shall be at least two (2) square feet per pound/per animal so confined. This structure must be species-appropriate.
 - b. At large, leash and muzzle. The owner of a dangerous animal shall not permit the animal to go unconfined unless the animal is securely muzzled and restrained by a chain or leash, while under the physical restraint of a person capable of restraining said animal, or kept in an adequate enclosure as outlined in Section 7-323. The muzzle shall be made in a manner that will not cause injury to the animal or interfere with its vision or respiration, but shall prevent it from biting any human or animal.
 - c. Signs. The owner of a dangerous animal shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a dangerous animal on the premises. A similar sign is required to be posted on each side of the pen, enclosure or

kennel of the animal. The sign must be capable of being read from the public highway or thoroughfare and the sign shall include a non-verbal symbol warning of the presence of a dangerous dog.

2. Penalties. Violations of Sections 7-332(a), (b), or (c) shall result in a penalty of not more than five hundred dollars (\$500.00). [TCR 08-56, 11-70]

7-333 Animal fighting or attack training; penalty.

1. No person, shall possess, harbor, or maintain care or custody of any dog, or other animal for the purpose of animal fighting, nor shall any person train, torment, badger, bait or use any animal for the purpose of causing or encouraging the animal to attack human beings, domestic animals, or livestock. This does not include accredited animal training programs for police use.
2. For purposes of this Section, each day that a violation occurs, shall be considered a separate offense, and if a separate citation is issued for each offense, each such separate offense may be punished separately. A criminal charge does not discharge liability in a civil suit for the same offense.
3. Penalty. Violations of Section 7-333(a) shall result in a penalty of not more than one thousand dollars (\$1000.00). [TCR 08-56, 11-70]

7-334 Keeping of innately wild animals. As used in this Section, the term innately wild animals shall include lions, tigers, cougars, panthers, bears, wolves, wolf-hybrid, cat-hybrid and other non-domestic animals of an untamable disposition; notwithstanding that their natural wildness may be intermittently dormant, as said wildness is likely to be awakened at any time, suddenly and unexpectedly. The failure to specifically list any animal in this subsection will not preclude such animal from being deemed an innately wild animal of untamable disposition. The possession, maintenance, or keeping of innately wild animals within the Village and Reservation boundaries of Winnebago, Nebraska is hereby prohibited. This Section shall not apply to any zoo, circus, or sanctuary complying with applicable laws and regulations and keeping said innately wild animals for the education of the public. [TCR 08-56]

7-335 Wildlife protection. It is unlawful for any person to hunt, chase, shoot, wound, kill, net, trap, snare or in any other manner whatsoever catch any wildlife within the Reservation boundaries of Winnebago except as may be allowed pursuant to the rules, regulations and licensing requirements of the Winnebago Tribal Wildlife and Parks Commission. However, should it be determined by a Conservation Officer or Animal Services that a wild or domestic animal is causing a nuisance or creating verifiable property damage, humane live traps may be used to capture and translocate, or impound such animal. [TCR 08-56]

7-336 Keeping of exotic animals. The keeping of exotic animals, as defined in Section 7-300(12), shall be prohibited. [TCR 08-56]

7-337 Keeping of livestock. It shall be unlawful for any person to keep, maintain, or permit to run at large any livestock within the corporate limits of the Village of Winnebago. [TCR 08-56]

7-338 Keeping of animals for which no licensed, approved rabies vaccine is available. The keeping of animals for which no licensed, approved rabies vaccine is available shall be prohibited. [TCR 08-56]

7-339 Kennel standards.

1. All kennels, as defined herein, shall in addition to the other requirements of this Article, comply with minimum standards of this Section. Failure to meet these standards shall be grounds for denial of a permit or revocation of a permit. A kennel is defined as an establishment wherein any

person engages in the business of boarding, breeding, buying, grooming, letting for hire, training for a fee, or selling dogs or other animals.

STANDARDS:

- a. Enclosures must be provided which shall allow adequate protection against weather extremes. Floors of buildings, runs and walls shall be of an impervious material to permit proper cleaning and disinfecting.
 - b. Building temperature shall be maintained at a comfortable level. Adequate ventilation and adequate lighting shall be maintained.
 - c. Each animal shall have sufficient space to stand up, lie down and turn around without touching the sides or tops of cages.
 - d. Cages are to be of material and construction that permits cleaning and sanitizing.
 - e. Cage floors are to be of concrete, and unless radiantly heated, shall have a resting board or some type of bedding.
 - f. Runs shall provide an adequate exercise area and protection from the weather. Runs shall have an impervious surface.
 - g. All animal quarters and runs are to be kept clean, dry and in a sanitary condition.
 - h. The food shall be free from contamination, wholesome, palatable and of sufficient quantity and nutritive value to meet the normal daily requirements for the condition and size of the animal.
 - i. All animals shall have potable water available at all times. Water vessels shall be mounted or secured in a manner that prevents tipping and be of the removable type.
2. The Office of Environmental Health is authorized to establish procedures and applications for the issuance of permits for the operation of kennels. [TCR 08-56]

7-340 Harboring of strays.

1. Any person who harbors any animal found astray within the Reservation shall, within twenty-four hours, notify the Animal Services department.
2. Harboring or feeding an animal for twenty-four hours or more shall constitute ownership by the person feeding the animal. [TCR 08-56]

7-341 Trapping animals.

1. No person may set traps in the Village proper for purposes of apprehending wild or domesticated animals. This Section does not prohibit: trapping mice, rats, other household vermin, moles or other underground pests so long as the traps used may be triggered only by subsurface action, or setting of traps in the line of duty by a Conservation Officer or an Animal Control Officer or with written permission from and under supervision of a Conservation Officer or an Animal Control Officer or licensed pest control operator. [TCR 08-56]

7-342 Rabies reports; examination; quarantine.

1. Report by owner. It shall be the duty of the agent or owner of any dog, cat or other domesticated animal suspected of being infected with rabies or other diseases communicable to human beings, or any animal that has attacked, bitten or caused any skin abrasion upon any person, to report the same at once to the Animal Services or Health Department.
2. Report by physician. It shall be the duty of any physician to immediately transmit to the Animal Services or Health Department any information that may come to him/her in his/her professional capacity with reference to any patient of his/hers having been attacked, bitten or having any skin abrasion caused by any dog, cat or other domesticated animal.

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3. Report by others. It shall be the duty of any person so attacked or bitten or who has any skin abrasion caused by being attacked or bitten by any dog, cat or other domesticated animal to immediately report the same to the Animal Services or Health Department.
4. Examination. In the event of any of the foregoing contingencies, the Law Enforcement Officers, the Health Officer, the Animal Control Officer or Conservation Officer shall cause the dog, cat or other domesticated animal so suspected of being infected with diseases communicable to human beings, or who has attacked, bitten or caused any skin abrasion upon any person, to be immediately examined.
5. Quarantine conditions. The Law Enforcement Officers, the Health Officer, the Conservation Officer or the Animal Control Officer shall thereupon make such examinations as in his/her judgment are necessary to determine whether or not such dog or cat or other domesticated animal is suffering from rabies or other communicable diseases transmissible to human beings, and shall place such dog, cat or other domesticated animal in quarantine and keep it under observation for such period as in his/her opinion may be necessary, but at least for a period of ten (10) days.
6. Quarantine place. Such dog or cat or other animal may be placed in quarantine at the owner's home providing the Law Enforcement Officer, the Health Officer, the Conservation Officer or the Animal Control Officer is satisfied that such animal can be kept, tied and isolated from all other animals and cannot come into contact with any person or persons. It is unlawful to permit such quarantined animal to be untied or to come into contact with persons or other animals. If, in the opinion of the Law Enforcement Officer, the Health Officer, the Conservation Officer or the Animal Control Officer, this is not possible, the dog, cat or other domesticated animal may be quarantined at the animal control facility at the expense of the owner.
7. Report of condition. It shall be the duty of the owner or agent, after a dog, cat or other domesticated animal is placed under quarantine, to report at once to the officer who has placed the animal under quarantine any noticeable change in the physical condition of such animal, and to notify him/her at once in the event that such animal should die.
8. Death of animal during quarantine. In the event of the death of an animal suspected by the officers of being rabid or suffering from disease, the owner, or his agent, of said animal shall leave the carcass, and shall turn over said animal to local and state health officials for the purpose of making such post mortem examinations or other examinations, including autopsy and disposal thereof which, in his/her opinion, are necessary to determine whether or not such animal has died of rabies or other diseases communicable to humans.
9. Payment of quarantine and examination costs.
 - a. The owner of any animal quarantined may redeem such animal after any quarantine period upon the payment of all costs of confinement, including cost of food and the care of such animal. If the animal is a stray or the owner is unknown, the agency ordering the quarantine will be billed for all costs relative to the animal.
 - b. When an animal dies during quarantine, the owner, if known, shall be billed for all costs of confinement to date of death, and for all examinations, including post mortem or laboratory tests for rabies.
 - c. If the owner of an animal or any other person or organization specifically requests a post mortem or laboratory examination of an animal for rabies, then the person making such a request shall pay all costs incurred.
10. Periodic examination of animal. It shall be the duty of the Health Officer to make, in addition to the initial examination, at least one subsequent examination at the end of the ten (10)-day period, and such other examination as he/she may deem necessary. [TCR 08-56]

7-343 Civil liability of owner for damages caused by the owner's dog, cat or other domesticated animal. Every person owning or harboring a dog, cat or other domesticated animal shall be liable for all damages done by the dog, cat or other domesticated animal. [TCR 90-73, 08-56]

7-344 Sovereign immunity of the Tribe. There is no waiver of sovereign immunity of the Winnebago Tribe of Nebraska in the implementation of this law. [TCR 90-73, 08-56]

7-345 Penalties. For use in this Article, the penalties for violation are as follows:

1. Unless otherwise provided, the civil penalty for any person to do any act forbidden or to fail to perform any act required by any provision or section of this Animal Control Article is twenty-five dollars (\$25.00) for the first violation, fifty dollars (\$50.00) for the second violation and seventy-five dollars (\$75.00) for any subsequent violations.
2. All civil penalties are to include court costs and, except for Sections 7-332 and 7-333, court appearances are waivable.
3. Court proceedings to enforce civil penalties herein are to be initiated by the issuance of a citation by a Law Enforcement Officer or Tribal Conservation Officer or by the filing of a civil complaint by the Tribal Prosecutor.
4. Penalties collected for violations of this Article, less court costs, shall be disbursed to the Office of Environmental Health for the purpose of defraying the costs of licensing, education, and other expenses related to Animal Control.
5. Failure to appear as directed by a citation or civil complaint or failure to otherwise fully satisfy the penalty assessed thereby shall be punishable pursuant to the Winnebago Criminal Code § 3-639.
6. Cost incurred by Tribal or Village authorities for the spaying or neutering of a dog or cat pursuant to Section 7-311(1) shall be assessed and payable as a penalty under this Section. [TCR 90-73, 08-56, 11-70]

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TITLE 7
ARTICLE 4
OPEN BURNING

| | | | |
|-------|------------------------------|-------|-------------------|
| 7-401 | Definitions. | 7-404 | Trash containers. |
| 7-402 | Open burning. | 7-405 | Penalty. |
| 7-403 | Prohibition on open burning. | | |

7-401 Definitions. For the purpose of this Article the following words shall have the following meanings unless otherwise required:

1. Person. Any individual, household, firm, partnership, corporation, company, society, association, and every officer, agent or employee thereof.
2. Open burning. Any burning from which the products of combustion are discharged directly into the open air without passing through a stack or chimney.

7-402 Open burning. Open burning is prohibited with the following exceptions:

1. Controlled burning of weeds;
2. Fires used for educational, recreational, cooking or religious purposes;
3. Small outdoor fires necessary for producing a source of heat;
4. Trash burning of household garbage in metal barrels except that insofar as possible such household garbage should be left unburned for regular garbage collection.
5. Burning of household garbage shall be permitted when done in a metal barrel with a capacity of fifty five gallons or more and only when covered with a metal screen of sufficient density to prevent unburned or burning particles from escaping from the barrel;
6. Such fires shall be attended at all times until completely extinguished.

7-403 Prohibition on open burning. Nothing contained herein shall prohibit appropriate Tribal officials from banning open burning during periods of extreme fire danger.

7-404 Trash containers. Trash containers shall be limited in capacity to the lesser of fifty five gallons or one hundred pounds and shall be secured at any opening and to the earth so as to prevent spillage and animal entrance.

7-405 Penalty. Any person who willfully or negligently violates this Article shall be subject to citation by the Winnebago Tribal Police or the Bureau of Indian Affairs police and shall, upon citation, be ordered to appear in Winnebago Tribal Court. A person found guilty of willful or negligent violation of this Article shall be subject to a fine of not more than one thousand dollars (\$1,000.00). Additionally, the Winnebago Tribal Court may order restitution for any actual damages caused by such person's violation of this Article.

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TITLE 7
ARTICLE 5
BURNING OF PETROLEUM PRODUCTS

7-501 Definitions. 7-503 Penalty.
7-502 Burning of petroleum products.

7-501 Definitions. For the purpose of this Article the following words shall have the following meanings unless otherwise required:

1. Person. Any individual, household, firm, partnership, corporations, company, society, association, and every officer, agent or employee thereof.
2. Petroleum products. Any product which is composed of petroleum, including but not limited to, motor oil, plastic, or rubber.

7-502 Burning of petroleum products. Any burning of petroleum products is prohibited, with the exception of burning in a Tribally-approved incinerator.

7-503 Penalty. Any person who willfully or negligently violates this Article shall be subject to citation by the Winnebago Tribal police or the Bureau of Indian Affairs police and shall, upon citation, be ordered to appear in Winnebago Tribal Court. A person found guilty of willful or negligent violation of this Article shall be subject to a fine of not more than one thousand dollars (\$1,000.00). Additionally, the Winnebago Tribal Court may order restitution for any actual damages caused by such person's violation of this Article.

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TITLE 7
ARTICLE 6
OPEN DUMPING

| | | | |
|-------|---------------|-------|----------|
| 7-601 | Definitions. | 7-603 | Penalty. |
| 7-602 | Open dumping. | | |

7-601 Definitions. For the purpose of this Article, the following words have the following meanings unless otherwise required:

1. Person. Any individual, household, firm, partnership, corporation, company, society, association, and every officer, agent or employee thereof.
2. Garbage. All solid wastes, including but not limited to, ashes, paper, wood, tin cans, yard clippings, glass, bedding, and the carcasses of animals.
3. Open dumping. Disposing of garbage in any manner except:
 - A. In trash containers pursuant to Title 7 Article 4, et. seq. of the Winnebago Tribal Code.
 - B. Within a Tribally-approved landfill area pursuant to Tribal regulations for landfill dumping.

7-602 Open dumping. Open dumping is prohibited within the exterior boundaries of the Winnebago Indian Reservation.

7-603 Penalty. Any person who willfully or negligently violates this Article shall be subject to citation by the Winnebago Tribal police or the Bureau of Indian Affairs Police and shall, upon citation, be ordered to appear in Winnebago Tribal Court. A person found guilty of willful or negligent violation of this Article shall be subject to a fine or not more than one thousand dollars (\$1,000.00). Additionally, the Winnebago Tribal Court may order restitution for any actual damage caused by such person's violation of this Article.

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TITLE 7

ARTICLE 8

COMPULSORY EDUCATION

(As amended October 8, 2004 [TCR 05-03])

| | | | |
|-------|---|-------|--|
| 7-801 | Compulsory education; attendance required. | 7-806 | Non-attendance; duty to report; investigation. |
| 7-802 | Compulsory education; exceptions. | 7-807 | Excessive absenteeism; report. |
| 7-803 | Record of attendance; made where. | 7-808 | Diversion team; process. |
| 7-804 | Non-attendance lists; transmission of information. | 7-809 | Failure to comply with diversion process; continued violation; further action. |
| 7-805 | Entry or withdrawal of student; attendance reports. | 7-810 | School procedures. |
| | | 7-811 | Effective date. |

7-801 Compulsory education; attendance required. Every person residing in the area comprised by State of Nebraska School District 17 who has legal *guardianship* or actual charge or control of any child not less than seven nor more than *nineteen* years of age shall cause such child to attend regularly the public, private, denominational, or parochial day schools each day that such schools are open and in session, except when excused by school authorities, unless such child has been graduated from high school.

7-802 Compulsory education; exceptions.

1. Section 7-801 shall not apply where a child has obtained a General Equivalency Diploma (GED) prior to the effective date of this Title 7, Article 8, or when illness or severe weather conditions make attendance impossible or impracticable.
2. In no case shall a child be allowed to enroll in a GED program prior to reaching the age of eighteen (18).
3. Should a child between the ages of eighteen and nineteen, seek to withdraw from regular school attendance for the purposes of enrolling in a GED program, an application for such purpose shall be made to the school superintendent.
4. The school superintendent shall forward all withdrawal applications to the Diversion Team for review and approval or denial.
5. Such child shall be required to attend a meeting with the Diversion Team, at which the Diversion Team shall assist the child in exploring all available educational options. The Diversion Team shall work with the child to develop a continuing education plan, which shall be monitored by the Diversion Team until such child completes his/her high school educational requirements or attains the age of nineteen.
6. Students who are enrolled in a GED program must provide documentation of enrollment and regular attendance to the school superintendent. Upon completion of GED requirements, a copy of the diploma shall be provided to the school superintendent.

7-803 Record of attendance; made where. Each public, private, denominational and parochial school of State of Nebraska School District 17 shall keep a record showing (1) the name, age, and legal residence of each child enrolled; (2) the name of the parent or legal guardian; (3) the number and county of the school district in which said school is located; (4) the number of days each pupil was present and the number of days absent; and (5) the cause of each absence. On the third day on which the public, private, denominational and parochial schools are in session at the beginning of each school year, a list shall be sent to the superintendent of said schools including the names of the pupils enrolled in his/her schools, with the age, grade and address of each. At St. Augustine's Elementary School, the list shall be sent to the principal of that school.

7-804 Non-attendance lists; transmission of information. The superintendent of the Winnebago Public Schools, or his designee, upon receipt of the list specified in Section 7-803, shall (1) compare the names of the children enrolled with the last census report on file in his/her office from such district; (2) prepare a list of all children resident in such district under his jurisdiction who are not attending school as provided in Section 7-801; and (3) transmit the list to the principal or attendance officer of said district. The principal of St. Augustine's Elementary School, or his designee, shall perform the duties for the purposes of this Section.

7-805 Entry or withdrawal of student; attendance reports. Whenever any child shall enter or withdraw from the Winnebago Public Schools after the third day in which school is in session, the name of such child shall be transmitted to the principal or attendance officer of the Winnebago Public Schools, who shall use such information in whatever way he/she shall deem necessary for the purpose of enforcing Section 7- 801. The principal of St. Augustine's Elementary School, or his designee, shall perform the duties for the purposes of this Section.

7-806 Non-attendance; duty to report; investigation.

1. In the area comprised by State of Nebraska School District 17, the superintendent, or any principal, teacher, or member of the board of education of any school within said district who shall know of any violation of Section 7-801 on the part of any child of school age, his/her parents, the person in actual or legal control of such child, or any other person, shall within three days report such violation to the principal or attendance officer of Nebraska School District 17 and/or the principal of St. Augustine's Elementary School as the person making the report believes appropriate.
2. When of his/her personal knowledge, by report or by complaint as provided herein, the principal or attendance officer believes that any child is unlawfully absent from school, he/she shall immediately investigate and render all service in his/her power to compel such child to attend some public, private, denominational, or parochial school which the person having control of the child shall designate.

7-807 Excessive absenteeism; report. At the end of each week during the school year, all absences of five or more days per semester shall be reported to the principal or attendance officer of the school. This report shall include (1) the name, age, and address of each child; (2) the number of days each child was absent; (3) the dates and cause of each absence; and (4) the parent or legal guardian's name. The principal of St. Augustine's Elementary School, or his designee, shall perform the duties for purposes of this Section. A copy of this report shall also be forwarded to Child & Family Services, the Juvenile Probation Officer, and to the Tribal Prosecutor so that each department can conduct appropriate follow up, if necessary.

7-808 Diversion team; process.

1. A "Diversion Team" shall be established by each school in the District to serve the purpose of assisting school officials in responding to violations of Section 7-801. The Diversion Team shall consist of an Intervention/Prevention Specialist, at least one school official and at least one representative from another juvenile services program in the District as deemed appropriate by the superintendent or by the principal in the case of St. Augustine's Elementary School.
2. Upon determination by the principal or attendance officer that a serious violation of Section 7-801 has occurred, a notice shall be sent to the Diversion Team, who shall then schedule a meeting with the parent or legal guardian regarding said violation within three (3) school days or as soon as practicable. A serious violation is one in which a child has been absent five (5) or more days of school during one semester.

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3. A written notice of said meeting with the Diversion Team shall be sent to the parent or legal guardian of the child.
4. A Diversion Contract shall be developed by and between the Diversion Team, the child and/or the parent or legal guardian.
5. The Diversion Contract should address all aspects such as the physical, emotional, mental and spiritual needs of the child and/or family as deemed appropriate by the team. The Diversion Team shall make every effort to provide referrals and coordinate efforts with other family support services and resources available to the family in order to ensure compliance with Section 7-801. The Diversion Team may utilize traditional peacemaking, truancy mediation, family group counseling, and/or other methods of appropriate intervention.
6. School officials shall develop procedures to effectively implement and coordinate the Diversion process. The school principal shall designate an Intervention/Prevention Specialist who will be responsible for monitoring Diversion Contracts.

7-809 Failure to comply with diversion process; continued violation; further action.

1. Continued absenteeism, exceeding eight days or more in a semester or otherwise failing to comply with the Diversion process shall result in a mandatory meeting with the Diversion Team, which may include Court personnel.
2. The parent or legal guardian shall be notified of this meeting by written notice or through personal contact from the Diversion Team.
3. The Diversion Team shall make a determination regarding further action, which may include, but is not limited to, entering into a revised Diversion Contract, a referral to Child & Family Service, and/or a referral to the Tribal Prosecutor.
4. Upon referral to the Tribal Court, the prosecutor may file a complaint before the judge of the Tribal Court pursuant to Section 3-713.
5. A determination must be made by the prosecutor to file a complaint or deny the referral within five (5) days after receipt. The decision shall then be communicated by the prosecutor to the referring school official so additional action can be taken, if warranted.
6. If any person again violates the same section after a first notice of continued violation has been sent, no further written notice shall be required, but a complaint may be filed at once.

7-810 School procedures. Nothing in this Code provision shall prevent any school in District 17 from enacting internal procedures, which shall further the intent of the Winnebago Tribe to enforce compulsory school attendance, so long as such procedures do not conflict with the provisions as set forth herein.

7-811 Effective date. This Article 8 of Title 7 “Compulsory Education” shall become effective upon the date of enactment by the Tribal Council and shall remain in effect each year thereafter.

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TITLE 7
ARTICLE 9
FOOD CODE

| | | | |
|-------|--|-------|---|
| 7-901 | Food Code. | 7-924 | Surface Characteristics. |
| 7-902 | Food safety, illness prevention and honest presentation. | 7-925 | Handwashing Cleanser, Availability. |
| 7-903 | Statement. | 7-926 | Mechanical. |
| 7-904 | Statement of application and listing of terms. | 7-927 | Maintaining Premises, Unnecessary Items and Litter. |
| 7-905 | Person in Charge. | 7-928 | Prohibiting Animals. |
| 7-906 | Clean Condition. | 7-929 | Separation of poisonous or toxic materials. |
| 7-907 | Cleaning Procedure. | 7-930 | Poisonous or toxic materials; Restriction. |
| 7-908 | When to Wash. | 7-931 | Conditions of Use. |
| 7-909 | Clean Condition. | 7-932 | Rodent Bait Stations. |
| 7-910 | Eating, Drinking, or Using Tobacco. | 7-933 | Public Health Protection. |
| 7-911 | Discharge from the Eyes, Nose or Mouth. | 7-934 | Preventing Health Hazards, Provisions for Conditions Not Addressed. |
| 7-912 | Food. | 7-935 | Modifications and Waivers. |
| 7-913 | Characteristics. | 7-936 | Prerequisite for Operation. |
| 7-914 | Nonfood-Contact Surfaces. | 7-937 | Form of Submission. |
| 7-915 | Equipment and Utensils. | 7-938 | Qualifications and Responsibilities of Applicants. |
| 7-916 | Food-Contact Surfaces. | 7-939 | Contents of Application. |
| 7-917 | Nonfood-Contact Surfaces. | 7-940 | Existing Establishments, Permit Renewal, and Change of Ownership. |
| 7-918 | Approved System. | 7-941 | Denial of Application for Permit, Notice. |
| 7-919 | Outdoor Enclosure. | 7-942 | Revocation. |
| 7-920 | Receptacles. | 7-943 | Appeal. |
| 7-921 | Outside Receptacles. | 7-944 | Responsibilities of Permit Holder. |
| 7-922 | Storing Refuse, Recyclables, and Returnables. | | |
| 7-923 | Areas, Enclosures, and Receptacles, Good Repair. | | |

7-901 Food Code. These provisions shall be known as the Winnebago Tribe of Nebraska Food Code, hereinafter referred to as “this Code.”

7-902 Food safety, illness prevention and honest presentation. The purpose of this Code is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

7-903 Statement. This Code establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment inspection, employee restriction, permitting, and suspension of privilege to sell food to the public.

7-904 Statement of application and listing of terms. The following definitions apply in the interpretation and application of this Code.

1. “Adulterated” has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.
2. “Approved” means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
3. “Beverage” means a liquid for drinking, including water.

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4. “CFR” means Code of Federal Regulations. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.
5. “Code of Federal Regulations” means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which:
 - a. Is published annually by the U.S. Government Printing Office; and
 - b. Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.
6. “Consumer” means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.
7. “Corrosion-resistant material” means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.
8. “Critical item” means a provision of this Code, that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.
9. “Critical limit” means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
10. Drinking Water.
 - a. “Drinking water” means water that meets 40 CFR 141 National Primary Drinking Water Regulations.
 - b. “Drinking water” is traditionally known as “potable water.”
11. “Dry storage area” means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.
12. Easily Cleanable.
 - a. “Easily cleanable” means a characteristic of a surface that:
 - i. Allows effective removal of soil by normal cleaning methods;
 - ii. Is dependent on the material, design, construction, and installation of the surface; and varies, with the likelihood of the surface’s role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface’s approved placement, purpose, and use.
 - b. “Easily cleanable” includes a tiered application of the criteria that qualify the surface as easily cleanable as specified under Subparagraph (a) of this definition to different situations in which varying degrees of cleanability are required such as:
 - i. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
 - ii. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.
13. “Employee” means the permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
14. “EPA” means the U.S. Environmental Protection Agency.
15. Equipment.
 - a. “Equipment” means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

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- b. "Equipment" does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or over-wrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.
- 16. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- 17. "Food-contact surface" means:
 - a. A surface of equipment or a utensil with which food normally comes into contact; or
 - b. A surface of equipment or a utensil from which food may drain, drip, or splash:
 - i. Into a food; or
 - ii. Onto a surface normally in contact with food.
- 18. "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food contact surfaces.
- 19. "Food Establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. However, it does not include:
 - a. An establishment that offers only prepackaged foods that are not potentially hazardous;
 - b. A produce stand that only offers whole, uncut fresh fruits and vegetables.
- 20. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
- 21. "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:
 - a. The number of potential injuries; and
 - b. The nature, severity, and duration of the anticipated injury.
- 22. "Kitchenware" means food preparation and storage utensils.
- 23. "Law" means applicable statutes, regulations, and ordinances.
- 24. "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
- 25. Packaged.
 - a. "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.
 - b. "Packaged" does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
- 26. "Permit" means the document issued by the regulatory authority that authorizes a person to operate a food establishment.
- 27. "Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
- 28. "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.
- 29. "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance, including items such as medicines, first aid supplies, and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.
- 30. "Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.
- 31. "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:
 - a. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
 - b. Pesticides except sanitizers, which include substances such as insecticides and rodenticides;

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- c. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
 - d. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
32. “Premises” means:
- a. The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or
 - b. The physical facility, its contents, and the land or property not described under Subparagraph (a) of this definition if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.
33. Ready-to-Eat Food.
- a. “Ready-to-eat food” means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.
 - b. “Ready-to-eat food” includes:
 - i. Potentially hazardous food that is unpackaged and cooked to the temperature and time required for the specific food;
 - ii. Raw, washed, cut fruits and vegetables;
 - iii. Whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and
 - iv. Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.
34. “Refuse” means solid waste not carried by water through the sewage system.
35. “Regulatory authority” means the Office of Environmental Health or an authorized representative having jurisdiction over the food establishment.
36. “Sanitization” means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.
37. “Single-service articles” means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use.
38. “Single-Use Articles” means utensils and bulk food containers designed and constructed to be used once and discarded.
39. “Smooth” means a food-contact surface, floor, wall or ceiling having no roughness or projections making it difficult to clean.
40. “Support animal” means a trained animal such as a Seeing Eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.
41. “Tableware” means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.
42. “Temporary food establishment” means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.
43. “USDA” means the U.S. Department of Agriculture.
44. “Utensil” means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multi-use, single-service, or single-use; gloves used in contact with food, and food temperature measuring devices.

45. “Vending machine” means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

7-905 Person in Charge. The person in charge shall ensure that:

1. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this Code.
2. Employees are effectively cleaning their hands, by routinely monitoring the employees’ handwashing.
3. Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees’ observations and periodically evaluating foods upon their receipt.
4. Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees’ routine monitoring of the cooking temperatures.
5. Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within 4 hours, through daily oversight of the employees’ routine monitoring of food temperatures during cooling.
6. Employees are properly sanitizing cleaned multi-use equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing.

7-906 Clean Condition. Food employees shall keep their hands and exposed portions of their arms clean.

7-907 Cleaning Procedure. Food employees shall clean their hands and exposed portions of their arms with a cleaning solution by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers.

7-908 When to Wash. Food employees shall clean their hands and exposed portions of their arms immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:

1. After touching bare human body parts other than clean hands and clean, exposed portions of arms;
2. After using the toilet room;
3. After caring for or handling support animals or aquatic animals;
4. After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
5. After handling soiled equipment or utensils;
6. During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
7. When switching between working with raw food and working with ready-to-eat food; and
8. After engaging in other activities that contaminate the hands.

7-909 Clean Condition. Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

7-910 Eating, Drinking, or Using Tobacco. Employees shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result. A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

1. The employee's hands;
2. The container; and
3. Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

7-911 Discharge from the Eyes, Nose, or Mouth. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

7-912 Food. All food to be distributed to the public shall be safe, unadulterated, and truthfully presented.

7-913 Characteristics. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

1. Safe;
2. Durable, corrosion-resistant, and nonabsorbent;
3. Sufficient in weight and thickness to withstand repeated warewashing;
4. Finished to have a smooth, easily cleanable surface; and
5. Resistant to pitting, chipping, grating, scratching, scoring, distortion, and decomposition.

7-914 Nonfood-Contact Surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

7-915 Equipment and Utensils. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

7-916 Food-Contact Surfaces. Multi-use food-contact surfaces shall be:

1. Smooth;
2. Free of breaks, open scalus, cracks, chips, pits, and similar imperfections;
3. Free of sharp internal angles, corners, and crevices;
4. Finished to have smooth welds and joints; and
5. Accessible for cleaning and inspection by one of the following methods:
 - a. Without being disassembled;
 - b. By disassembling without the use of tools; or
 - c. By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.

7-917 Nonfood-Contact Surfaces. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

7-918 Approved System. Drinking water shall be obtained from an approved source that is:

1. A public water system; or
2. A nonpublic water system that is constructed, maintained, and operated according to law.

7-919 Outdoor Enclosure. If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

7-920 Receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leak-proof, and nonabsorbent. Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

7-921 Outside Receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers. Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

7-922 Storing Refuse, Recyclables, and Returnables. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

7-923 Areas, Enclosures, and Receptacles, Good Repair. Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

7-924 Surface Characteristics. Except as specified in (B) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

1. Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
2. Closely woven and easily cleanable carpet for carpeted areas; and
3. Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

In a temporary food establishment:

1. If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and
2. Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

7-925 Handwashing Cleanser, Availability. Each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

7-926 Mechanical. If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

7-927 Maintaining Premises, Unnecessary Items and Litter. The premises shall be free of:

1. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
2. Litter.

7-928 Prohibiting Animals.

1. Except as specified in (B) and (C) of this Section, live animals may not be allowed on the premises of a food establishment.
2. Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.
3. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems.
4. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas.
5. In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables.

7-929 Separation of poisonous or toxic materials. Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning and
2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

7-930 Poisonous or toxic materials; Restriction.

1. Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.
2. This Section does not apply to packaged poisonous or toxic materials that are for retail sale.

7-931 Conditions of Use. Poisonous or toxic materials shall be:

1. Used according to:
 - a. Law and this Code;
 - b. Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;
 - c. The conditions of certification, if certification is required, for use of the pest control materials; and
 - d. Additional conditions that may be established by the regulatory authority; and
2. Applied so that:
 - a. A hazard to employees or other persons is not constituted; and
 - b. Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:

- i. Removing the items;
 - ii. Covering the items with impermeable covers; or
 - iii. Taking other appropriate preventive actions; and
 - iv. Cleaning and sanitizing equipment and utensils after the application.
3. A restricted-use pesticide shall be applied only by an applicator certified as defined in 7 USC 136(e) Certified Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator.

7-932 Rodent Bait Stations. Rodent bait shall be contained in a covered, tamper-resistant bait station.

7-933 Public Health Protection. The regulatory authority shall apply this Code to promote its underlying purpose of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

7-934 Preventing Health Hazards, Provision for Conditions Not Addressed.

1. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this Code that are authorized by law. Said requirements are incorporated into this Code, and shall have the same force and effect as though set forth herein.
2. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

7-935 Modifications and Waivers. The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance.

7-936 Prerequisite for Operation. No person may operate a food establishment without a valid permit to operate issued by the regulatory authority. If the regulatory authority is unable to issue a permit due to vacancy or otherwise, a person may operate a food establishment pending approval or disapproval of a permit.

7-937 Form of Submission. A person desiring to operate a food establishment shall submit to the regulatory authority a written application for permit on a form provided by the regulatory authority.

7-938 Qualifications and Responsibilities of Applicants. To qualify for a permit, an applicant shall:

1. Be an owner of the food establishment or an officer of the legal ownership;
2. Comply with the requirements of this Code;
3. Agree to allow access to the food establishment and to provide required information.

7-939 Contents of Application. The application shall include:

1. The name, birth date, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
2. Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
3. The name, title, address, and telephone number of the person directly responsible for the food establishment;

4. A statement signed by the applicant that:
 - a. Attests to the accuracy of the information provided in the application; and
 - b. Affirms that the applicant will:
 - i. Comply with this Code; and
 - ii. Allow the regulatory authority access to the establishment for purposes of inspecting the food handling operations to determine compliance with this Code.

7-940 Existing Establishments, Permit Renewal, and Change of Ownership. The regulatory authority shall renew a permit for an existing food establishment or may issue a permit to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, and an inspection shows that the establishment is in compliance with this Code.

7-941 Denial of Application for Permit, Notice. If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

1. The specific reasons and Code citations for the permit denial;
2. The actions, if any, that the applicant must take to qualify for a permit; and
3. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

7-942 Revocation. The regulatory authority may revoke any previously granted permit upon determination that one of the requirements for a permit is no longer met.

7-943 Appeal. Any denial of a permit to operate or a revocation of an existing permit may be appealed to the Winnebago Tribal Court System. Said appeal must be taken within 14 days of denial or revocation of said permit. The denial or revocation shall be upheld unless the Winnebago Tribal Court System finds that the decision of the regulatory authority was arbitrary or capricious.

7-944 Responsibilities of Permit Holder. Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

1. Abide by the provisions of this Code;
2. Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist;
3. Allow representatives of the regulatory authority access to the food establishment at reasonable times for the sole purpose of inspection.

WINNEBAGO TRIBAL CODE

TITLE 7
ARTICLE 10
CORONER

| | | | |
|--------|--|--------|--|
| 7-1000 | Appointment of coroner; qualifications; vacancies. | 7-1007 | Burial. |
| 7-1001 | Investigations and inquests. | 7-1008 | Bodies; effects; custody. |
| 7-1002 | Expenses. | 7-1009 | Certificates of death. |
| 7-1003 | Witnesses; fees. | 7-1010 | Expenses. |
| 7-1004 | Oath of witnesses. | 7-1011 | Fingerprinting of unidentified deceased person. |
| 7-1005 | Testimony; filing. | 7-1012 | Coroner removal of pituitary gland during autopsy. |
| 7-1006 | Witness bound over; return. | | |

7-1000 Appointment of coroner; qualifications; vacancies.

1. Appointment by resolution. There is hereby established the position and office of coroner. The appointment of a coroner shall be made by the Winnebago Tribal Council for an indefinite period. The coroner serves at the pleasure of the Winnebago Tribal Council.
2. Educational requirements. A coroner must have successfully completed academic courses in pharmacology, surgery, pathology, toxicology, and physiology.
3. Vacancies. Vacancies in the office of coroner shall be filled by the Winnebago Tribal Council by motion. A coroner may be removed from office by motion of the Tribal Council.

7-1001 Investigations and inquests.

1. Deaths requiring inquests and investigations. The coroner shall investigate and may conduct inquests in all human deaths of the following types:
 - a. Violent deaths, whether apparently homicidal, suicidal, or accidental, including but not limited to deaths due to thermal, chemical electrical or radiational;
 - b. Deaths under unusual or mysterious circumstances;
 - c. Deaths of persons whose bodies are to be cremated, dissected, buried at sea, or otherwise disposed of so that the bodies will later be unavailable for examination; and
 - d. Deaths of inmates of public institutions who are not hospitalized for organic disease and whose deaths are not of any type referred to in clause (1) or (2).
2. Violent or mysterious deaths; autopsies. The coroner may conduct an autopsy in the case of any human death referred to in subdivision 1, clause (1) or (2), when the coroner judges that the public interest requires an autopsy.
3. Deaths caused by fire; autopsies. The coroner shall conduct an autopsy in the case of any human death reported to the coroner by a fire marshal or a chief officer of a fire department where the death is apparently caused by fire.
4. Other deaths; autopsies; exhumation; consent. The coroner may conduct an autopsy in the case of any human death referred to in subdivision 1, clause (3) or (4), or may exhume any human body and perform an autopsy on it in the case of any human death referred to in subdivision 1 when the coroner judges that the public interest requires an autopsy. No autopsy shall be conducted unless the surviving spouse, or next of kin if there is no surviving spouse, consents to it or the Tribal Court, upon notice as the Court directs, enters an order authorizing an autopsy or an exhumation and autopsy. Application for an order may be made by the coroner, by the Tribal Prosecutor or by the General Counsel, upon a showing that the Court deems appropriate.
5. Assistance of medical specialists. If during an investigation the coroner believes the assistance of pathologists, toxicologists, deputy coroners, laboratory technicians, or other medical experts is necessary to determine the cause of death, the coroner shall obtain their assistance. Inquest. The

- record and report of the inquest proceedings may not be used in evidence in any civil action arising out of the death for which an inquest was ordered. Before an inquest is held, the coroner shall notify the county attorney to appear and examine witnesses at the inquest.
6. Records. The coroner shall keep properly indexed records giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause, and manner of death, and all other relevant information concerning the death.
 7. Reports. Deaths of the types described in this Section must be promptly reported for investigation to the coroner by the law enforcement officer, attending physician, mortician, person in charge of the public institutions referred to in (a), or other person with knowledge of the death.
 8. For the purposes of this Section, health-related records or data on a decedent, except health data defined in Section 13.38, whose death is being investigated under this Section, whether the records or data are recorded or unrecorded, including but not limited to those concerning medical, surgical, psychiatric, psychological, or any other consultation, diagnosis, or treatment, including medical imaging, shall be made promptly available to the coroner, upon the coroner's written request, by a person having custody of, possession of, access to, or knowledge of the records or data. The coroner shall pay the reasonable costs of copies of records or data provided to the coroner under this Section. Data collected or created pursuant to this subdivision relating to any psychiatric, psychological, or mental health consultation with, diagnosis of, or treatment of the decedent whose death is being investigated shall remain confidential or protected nonpublic data, except that the coroner's report may contain a summary of such data.
 9. Coroner in charge of body. Upon notification of a death subject to this Section, the coroner shall proceed to the body, take charge of it, and, when necessary, order that there be no interference with the body or the scene of death.
 10. Criminal act report. On coming to believe that the death may have resulted from a criminal act, the coroner or deputy shall deliver a signed copy of the report of investigation or inquest to the Tribal prosecutor.
 11. Sudden infant death. If a child under the age of two years dies suddenly and unexpectedly under circumstances indicating that the death may have been caused by sudden infant death syndrome, the coroner, medical examiner, or personal physician shall notify the child's parents or guardian that an autopsy is essential to establish the cause of death as sudden infant death syndrome. If an autopsy reveals that sudden infant death syndrome is the cause of death, that fact must be stated in the autopsy report. The parents or guardian of the child shall be promptly notified of the cause of death and of the availability of counseling services.
 12. Autopsy fees. The coroner may charge a reasonable fee to a person requesting an autopsy if the autopsy would not otherwise be conducted under subdivision 1, 2, or 3.

7-1002 Expenses. The county board may allow the reasonable and necessary expenses of the coroner or deputies incurred for telephone tolls, telegrams, postage, the cost of transcribing the testimony taken at an inquest, and other expenses incurred solely for the officers' official business under this chapter.

7-1003 Witnesses; fees. The coroner may issue subpoenas for witnesses, returnable immediately or at a specified time and place. The persons served with the subpoenas shall be allowed the fees, the coroner shall enforce their attendance, and they shall be subject to the penalties provided by statute or the rules of criminal procedure.

7-1004 Oath of witnesses. The following oath shall be administered to the witnesses by the coroner: "Do you solemnly swear or affirm that the evidence you shall give to this inquest concerning the death of the person lying before you dead shall be the whole truth and nothing but the truth?"

7-1005 Testimony; filing. The testimony of a witness examined at an inquest must be put in writing by the coroner or under the coroner's direction and signed by the witness. The coroner shall then file the

testimony, together with a record of all proceedings, in the office of the Court Administrator of the Tribal Court.

7-1006 Witness bound over; return. If the coroner finds that murder, manslaughter, or assault has been committed, the coroner shall so inform the Tribal prosecutor. The coroner shall return to the Tribal prosecutor the inquisition, written evidence, and all recognizances and examinations taken.

7-1007 Burial. When a coroner holds an inquest upon view of the dead body of any person unknown, or, being called for that purpose, does not think it necessary, on view of the body, that an inquest be held, the coroner shall have the body decently buried. All expenses of the inquisition and burial shall be paid by the Tribe.

7-1008 Bodies; effects; custody. A person may not remove, interfere with or handle the body or the effects of any person subject to an investigation by the coroner except upon order of the coroner, the Tribal prosecutor or the Tribal Court. The coroner takes charge of the effects found on the body of a deceased person and disposes of them as the Tribal Court directs by written order. If a crime in connection with the death of a deceased person is suspected, the coroner or medical examiner may prevent any person from entering the premises, rooms, or buildings, and shall have the custody of objects that the coroner deems material evidence in the case. A willful violation of this Section is a misdemeanor.

7-1009 Certificates of death. No person, other than the county coroner or judge exercising probate jurisdictions shall issue a certificate of death in cases of violent or mysterious deaths, including suspected homicides, occurring on the reservation.

7-1010 Expenses. The Tribe may allow the reasonable and necessary expenses of the coroner incurred for telephone tolls, telegrams, postage, the cost of transcribing the testimony taken at an inquest, and other expenses incurred solely for the officers' official business under this chapter.

7-1011 Fingerprinting of unidentified deceased person. Each coroner shall have fingerprinted all deceased persons on the reservation whose identity is not immediately established. Within 24 hours after the body is found, the coroner shall forward to the Tribal prosecutor the fingerprints, fingerprint records, and other identification data.

7-1012 Coroner removal of pituitary gland during autopsy. A county coroner who performs an autopsy under this article may remove the pituitary gland from the body and give it to the national pituitary agency, or any other agency or organization, for research if the following conditions have been met:

1. The removal would not alter a gift made to another;
2. The coroner or medical examiner has no knowledge of any objection to the removal by the decedent or other person having the right to control the disposition of the body; and
3. The coroner has followed generally accepted ethical guidelines and the removal would not violate the tenets of the deceased's religion.

WINNEBAGO TRIBAL CODE

TITLE 7

ARTICLE 11

WINNEBAGO DRUG-FREE WORK PLACE

(Enacted July 17, 1996)

| | | | |
|--------|--------------------------------------|--------|-----------------------------|
| 7-1101 | Citation. | 7-1110 | Refusal to submit. |
| 7-1102 | Purpose. | 7-1111 | Positive test results. |
| 7-1103 | Definitions. | 7-1112 | Release of test results. |
| 7-1104 | Statement of policy on drugs. | 7-1113 | Laboratory facility. |
| 7-1105 | Statement of policy on alcohol. | 7-1114 | Applicants. |
| 7-1106 | Education and training of employees. | 7-1115 | Prohibited acts; penalties. |
| 7-1107 | Drug and alcohol testing procedures. | 7-1116 | Supervisor responsibility. |
| 7-1108 | Drug test results. | 7-1117 | Consent to jurisdiction. |
| 7-1109 | Alcohol test results. | | |

7-1101 Citation. This article shall be known and may be cited as the “Drug-Free Workplace Act,” and references in this article to “the Act” shall refer to this article unless another is clearly indicated. [TCR 96-56]

7-1102 Purpose. The Winnebago Tribe of Nebraska is committed to maintaining a safe, healthful and productive work environment for all employees. To that end, the Winnebago Tribe will attempt to eliminate the abuse of alcohol, illegal drugs, prescription drugs, or any other substance which could impair an employee’s ability to perform safely and effectively the functions of any given job. Drug and alcohol abuse of any nature by employees of the Winnebago Tribe of Nebraska cannot be tolerated. All employees of the Winnebago Tribe are covered by this statute, regardless of the physical location of the work place. The purpose of this Act is as follows:

1. To establish and maintain a safe and healthy working environment for all employees;
2. To ensure the reputation of the Winnebago Tribe of Nebraska employees as good, responsible employees worthy of public trust;
3. To reduce the incidents of accidental injury to persons or property;
4. To reduce absenteeism, tardiness, and indifferent job performance; and
5. To provide assistance toward rehabilitation for any employee who seeks the Tribe’s help in overcoming any addiction to, dependence upon, or problem with alcohol or drugs. [TCR 96-56]

7-1103 Definitions. For purposes of the Act, unless the context otherwise requires:

1. “Alcohol” shall mean any product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, synthetic ethyl alcohol, spirits, wine and beer, every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary and toilet preparations.
2. “Alcohol or drug abuse.” For the purposes of this Act, alcohol and drug abuse shall be defined as an employee’s dependence or addiction of sufficient severity to have the effect of impairing the performance of his/her official duties or his/her job behavior.
3. “Applicant” shall mean any person who has applied for employment with an employer as defined in subsection (12) but who is not an employee.
4. “Breath-testing device” shall mean an Intoxilizer model 5000 or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations.
5. “Breath-testing device operator” shall mean a person who has obtained or been issued a permit pursuant to the department rules and regulations.

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6. “Department” shall mean the Nebraska or Iowa Department of Health.
7. “Department rules and regulations” shall mean the techniques and methods authorized by the Nebraska or Iowa Department of Health.
8. “Drug” shall mean any substance, chemical, compound as described, defined or delineated in the Winnebago Criminal Code, Title III, Section 3-745, incorporating 21 U.S.C. 812, or any metabolite or conjugated form thereof, except that any substance, chemical or compound containing any product as defined in subsection (1) of this Section may also be defined as alcohol. Notwithstanding any provisions of this Act, peyote, or any non-synthetic derivative thereof, shall not be defined as an illegal drug if its use is in accordance with the practices of the Native American Church, or in such cases where the possession, use, or transfer is strictly in accordance with bona fide religious or medicinal purposes of locally recognized members.
9. “Drug test” or “Drug testing” shall mean any breath, blood, urine, saliva, chemical, skin tissue or related test conducted for the purpose of detecting the presence of drugs or alcohol, or a substance which inhibits the detection of such drugs or alcohol in an individual.
10. “Employee” shall mean any person who received any wage, commission, bonus or other form of compensation in return for such person’s actions which are intended to directly or indirectly benefit an employer.
11. “Employee Assistance Program” (EAP) is defined as the program provided by the Winnebago Tribe for the benefit of its employees. In addition, the services of designated mental health professionals are provided to those employees for their assistance with any drug or alcohol problem.
12. “Employer” shall mean the Winnebago Tribe and its organization, business and governmental subdivisions, any governmental entities and any person, association or entity contracting to do business with the Winnebago Tribe within the exterior boundaries of the reservation of the Winnebago Tribe of Nebraska.
13. “Impaired” shall mean the inability of an employee to perform his/her usual and normal work assignments with normal effectiveness and efficiency.
14. “Reasonable suspicion” shall mean a belief based on objective facts sufficient to lead a reasonable, prudent person to suspect that an employee is under the influence of a substance so that the employee’s ability to perform the functions of the job is impaired or so that the employee’s ability to perform his/her job safely is reduced. Reasonable suspicion may result from actual observation of the use or ingestion of a substance by an employee. It may be based on reliable information that the employee is currently or has recently used or possessed a controlled substance or open container with alcohol on the job. Reasonable suspicion may result from an observation of physical symptoms, such as slurred speech, red watery eyes, unsteady gait, dilated pupils, drowsiness, or actual sleeping on the job. In addition, reasonable suspicion may result from the observation of behavioral symptoms, such as severe mood swings, unexplained personality changes, inattention to personal hygiene and frequent accidents.
15. “Reservation” shall mean all the territory with the exterior boundaries of the Winnebago Indian Reservation (including Flower’s Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty sections included in the strip purchased in Nebraska for the Wisconsin Winnebago (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title of lands through the Courts to the Tribe, except as otherwise provided by law. This definition of reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc. [TCR 96-56]

7-1104 Statement of policy on drugs.

1. Abuse of alcohol and drugs by Tribal employees will not be tolerated. Employees of the Winnebago Tribe of Nebraska shall not:
 - a. Report to work impaired by any drug;
 - b. Whether or not on or off duty, illegally use, manufacture, possess, sell, or provide to another any drug.
2. Use or possession of medically prescribed drugs or medications that have been legally prescribed to the employee by a person licensed to do so or use of peyote for medicinal or religious purposes are not violations of this Act. However, no prescription medication of any sort shall be brought upon Tribal property by any person other than the person for whom the medication is prescribed and shall be used only in the manner, combination and quantity prescribed.
3. A Tribal employee who is taking any medication, whether prescribed or non-prescribed, which may interfere with the safe and effective performance of duties or operation of Tribal equipment is required to advise his/her supervisor of the fact before beginning work. In the event that there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medication, clearance from a physician shall be required. Failure to advise a supervisor of the use of any medication which may interfere with the safe and effective performance of duties or operation of Tribal equipment may result in discipline.
4. Any employee who is convicted of a violation of any criminal drug or alcohol statute shall notify the Tribe of the conviction within five calendar days of the conviction. The employee shall enter and participate in a rehabilitation program through the Employee Assistance Program. [TCR 96-56]

7-1105 Statement of policy on alcohol.

1. Employees of the Winnebago Tribe of Nebraska shall not:
 - a. Report to work impaired by the use of alcohol;
 - b. While on duty, use, possess, sell, or provide alcohol to another; and
 - c. While on call, use, possess, sell, or provide alcohol to another.Failure to report such usage, possession, sale or provision of alcohol in the workplace shall result in termination.
2. In certain situations, employees are individually placed "on call." For these employees, "on call" shall mean those situations where an employee has been specifically and personally notified that he/she is on stand-by for a specific period of time and subject to being called in for Tribal work on an emergency basis. Such notification must occur either at the end of an employee's work shift before the employee leaves work or eight hours before any call-in would occur.
3. For the purposes of this Act, an employee whose blood, breath, or urine, when tested contains any alcohol concentration, is presumptively deemed impaired by the use of alcohol, unless the employee has properly reported use of medication pursuant to Section 7-1104(3). [TCR 96-56]

7-1106 Education and training of employees.

1. The Winnebago Tribe will develop and implement a Drugfree Awareness Program to inform its employees of:
 - a. The dangers of drug/alcohol abuse in the workplace;
 - b. The Tribe's policy regarding drug and alcohol use;
 - c. The availability of counseling, rehabilitation, etc., through the Tribe's Employee Assistance Program; and
 - d. The penalties that may be imposed upon employees for substance abuse violations.
2. In addition, educational activities focusing on stress, substance abuse, and other problem areas may also be provided. These activities are designed to promote early identification and self-

referral, prevent problems from developing and/or becoming more severe, and enhance the quality of life.

3. Employees are encouraged to utilize the programs provided by the Tribe in seeking assistance with drug/alcohol problems. Employees' use of these services privately and on their own initiative will not jeopardize job security, promotional opportunity, and/or reputation. When such use is private and voluntary, no report of any kind will be made by the Employee Assistance Program to the Tribe unless the employee freely and willingly chooses.
4. The Tribe will develop and implement a program of training to assist supervisory personnel in the recognition of conduct and behavior that gives rise to suspicion that an employee may be a drug/alcohol abuser. The intent of this training is not to put the supervisor in a position to diagnose alcohol/drug problems, but simply to make such supervisor sufficiently aware of the causes and symptoms so that he/she may seek proper referral. Such a training program shall also inform the supervisor of the Tribe's Employee Assistance Program and policies, as well as encourage the supervisor to seek proper consultation with the Employee Assistance Program when attempting to deal with an employee's deteriorating job performance. [TCR 96-56]

7-1107 Drug and alcohol testing procedures.

1. Any time a supervisor has reasonable suspicion to believe that an on-duty employee is impaired by alcohol or drugs, he/she shall immediately place such employee on special assignment in order to protect the employee, fellow employees, and the public from harm. The supervisor shall immediately notify his/her supervisor of such action.
2. The two supervisors will interview the employee. If both supervisors believe, based upon a reasonable suspicion, that the employee is impaired by the use of alcohol or drugs, then said employee will be ordered, pursuant to this Act, to submit to a test of his/her blood, breath or urine.
3. In determining whether or not the employee is impaired, the supervisors may consult with their supervisor, and if not available, the personnel director, and utilize any reasonable means or procedures available to confirm or disprove such suspicion, such as a breath alcohol pre-test, sobriety tests, and/or an examination to determine comprehension and motor skills.
4. A supervisor shall transport the employee to that facility designated by the Tribe for the performance of drug or alcohol tests. As soon as practicably possible, each supervisor shall document, in writing, to the department head the reasons and causes which gave rise to the reasonable suspicion. Additionally, this documentation shall include a narrative of what steps were taken by the supervisor(s).
5. Before a drug or alcohol test is administered, employees will be ordered to sign a consent form authorizing the test and permitting the release of test results to a designated Employee Assistance Program official(s). The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the Tribe's drug and alcohol testing act. The consent form for drug and alcohol tests shall also set forth the following information:
 - a. The procedure for confirming an initial positive test result.
 - b. The consequences of a confirmed positive test result.
 - c. The consequences of refusing to undergo a drug test.
6. In addition to the above outlined testing based upon reasonable suspicion and for pre-employment purposes, this article shall be followed in random testing. The Personnel Department of the Winnebago Tribe of Nebraska shall promulgate a written policy regarding random drug testing, which policy shall be subject to approval of the Tribal Council, and may be amended from time to time with the approval of the Tribal Council.
7. Any employee providing services which require transporting people or operating equipment or providing services to children and youth on a regular basis may be required as a condition of that employment to participate in periodic drug and alcohol testing. [TCR 96-56]

7-1108 Drug test results.

1. All drug testing shall be of the employee's urine. The initial drug screening shall be the Enzyme Immunoassay Techniques (EIT) test which shall be administered at Tribal expense. An employee or job applicant whose drug test indicates the presence of a drug group shall be given a second test, at Tribal expense, using Gas Chromatography/Mass Spectrometry (GC/MS).
2. If the GC/MS test confirms the drug group presence, both tests will be reviewed by a properly licensed and trained medical doctor. The purpose of this review is to see if the drug presence can be explained by the individual employee's medical history. In completing this review, the physician shall interview the employee and may perform a physical examination on such employee. Refusal to cooperate in such an interview or to consent to such physical examination shall be grounds for disciplinary action up to and including termination.
3. If the medical review confirms the presence of drugs in the employee's body fluids, then such test shall be considered positive. The employee or applicant shall be notified in writing in a sealed envelope marked "confidential" of the test results by the appropriate department head or designee. The letter of notification shall identify the particular substance found.
4. An employee who tests positive for drugs may, at the employee's own expense, have a third test conducted on the same sample at a laboratory pre-approved by the Tribe which meets the minimum criteria for drug testing. If the test is for alcohol, and the Tribe orders a breath test, the employee has the right to another test at his/her own expense. The test may be of blood or breath.
5. Except for breath test specimens, all specimens which result in the finding of drugs or alcohol shall be refrigerated and preserved in a sufficient quantity for re-testing for a period of at least one hundred eighty (180) days.
6. Except for breath test specimens, a written record of the chain of custody shall be maintained from the time of the collection of the specimen until the specimen is no longer required. [TCR 96-56]

7-1109 Alcohol test results.

1. A positive finding of alcohol by preliminary screening procedures shall be subsequently confirmed by either:
 - a. Gas Chromatography with a flame ionization detector or other scientific testing technique which has been approved by the Winnebago Tribe; or
 - b. Breath testing device operated by a breath testing device operator; or
 - c. An employee who tests positive for alcohol has the right to another test at the employee's expense. The test may be of blood or breath. [TCR 96-56]

7-1110 Refusal to submit. If an employee attempts to delay or evade by any means or otherwise refuses to consent to drug or alcohol testing, such refusal will be grounds for termination. The supervisor shall make every reasonable effort to ensure that such employee does not operate a motor vehicle by providing transportation for the employee to his/her home. Should the employee refuse to cooperate and attempt to operate a motor vehicle, the police shall be immediately notified. [TCR 96-56]

7-1111 Positive test results. Pursuant to Section 7-1107, an employee who tests positive for drugs or who is determined, based upon test or circumstances to be impaired by alcohol, or pursuant to Section 7-1104(4), is convicted of a violation of any criminal drug or alcohol statute will be subject to the following disciplinary actions:

1. In instances where the employee has endangered the health, safety or well-being of themselves, fellow employees or citizens, the employee will be terminated.
2. In instances where this is the employee's first offense, the employee will be placed on performance probation and referred to the Employee Assistance Program. This shall be a

management referral and as such, the employee shall be required to execute the proper medical releases so that the Employee Assistance Program may communicate to the Tribe whether such employee is in conformance with directed treatment. Such employees shall be required, in order to maintain their employment with the Tribe, to submit to random testing at intervals more frequent than the general work force to test for the consumption of alcohol or drugs for a period of time not to exceed two years. Any employee who tests positive for drugs or is shown to be impaired by alcohol pursuant to this random test, shall be terminated. Failure by an employee to comply with the Employee Assistance Program's directed treatment will result in termination.

3. In instances where the employee is already on performance probation, the employee will be terminated.
4. In instances where the employee tests positive for drugs or is determined to be impaired by alcohol and is the employee's second offense, the employee will be terminated. [TCR 96-56]

7-1112 Release of test results. At all stages of the drug/alcohol testing process, the employee's right to confidentiality will be respected and maintained as much as reasonably possible. Only those persons with a need to know are to be informed of the test results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee. All records relating to the taking of a drug or alcohol test, or the order to take a drug or alcohol test, shall be deemed confidential unless written authorization has been obtained freely and willingly from the employee, or the records become the subject of a personnel hearing or judicial proceeding. All records relating to the taking or ordering of a drug or alcohol test shall be kept in a separate file. Each department head shall implement procedures to prevent the unauthorized distribution of the results of an order to take such a test. [TCR 96-56]

7-1113 Laboratory facility.

1. The facility designated by the Tribe to administer drug/alcohol tests will be licensed pursuant to the Federal Clinical Laboratories Improvement Act of 1967, 42 United States Code, 263a, or be accredited by the College of American Pathologists. The above does not apply for breath tests. Any breath testing device shall conform to the rules and regulations of the Winnebago Traffic Code.
2. The facility designated by the Tribe shall use strict chain of custody procedures which ensure proper identification, labeling and handling of test samples. Such samples, except for breath test specimens, which result in a finding of drugs or alcohol, shall be refrigerated and preserved in a sufficient quantity for re-testing. Further, such facility shall in all respects, comply with all applicable state and federal statutes, rules and regulations. [TCR 96-56]

7-1114 Applicants.

1. Any applicant, including temporary hires and minor applicants, for any Tribal job shall be required as a part of his/her pre-employment examination to undergo drug testing pursuant to this article. A consent form authorizing such tests shall be obtained from the minor's parent(s) or legal guardian prior to the test. Any applicant, including temporary hires and minor applicants, who refuse to undergo such testing or tests positive for drugs or alcohol, shall have his/her hiring process terminated. Such person will not be allowed to re-apply for any Tribal position for a period of one year, unless the individual can prove he/she has successfully completed a rehabilitation program. [TCR 96-56]
2. Applicants who were employed by the Tribe within the last calendar year and who were terminated from their employment as a result of a violation of the "Drug Free Work Place Act," *Section 7-1111 Positive test results*, shall, if hired, be required to submit to random testing at intervals more frequent than the general work force to test for the consumption of alcohol and drugs for a time not to exceed two (2) years. [TCR 05-34]

7-1115 Prohibited acts; penalties.

1. It shall be unlawful to provide, acquire or use body fluids or breath samples for the purpose of altering results of any drug test. Any applicant or employee who violates this Section may be subject to the same disciplinary sanctions as if the applicant or employee had refused the directives of the employer to provide a body fluid or breath sample.
2. No person shall tamper with or aid or assist another in tampering with body fluids or breath samples at any time before, during or after the collection or analysis of such fluids or samples for the purpose of altering the results of any test to determine the presence of drugs or alcohol. Any applicant or employee who violates this Section will be subject to termination. [TCR 96-56]

7-1116 Supervisor responsibility. Supervisors are responsible for consistent enforcement of this Act. Any supervisor who knowingly permits a violation of this Act shall be subject to disciplinary action. Any non-supervisory employee who believes that any other Tribal employee, supervisor or non-supervisor is in violation of this Act may report that belief by contacting the personnel director. [TCR 96-56]

7-1117 Consent to jurisdiction. Any governmental entity, person, association or entity who enters into any contract or agreement with the Winnebago Tribe of Nebraska, including the person's or entity's agents, employees, subcontractors or independent contractors, consents and shall be deemed to consent to the civil jurisdiction of the Winnebago Tribe of Nebraska and the Winnebago Tribal Court. [TCR 96-56]

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TITLE 7
ARTICLE 12
WORKER'S COMPENSATION CODE

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7-1201 Purpose.

1. The Winnebago Tribe of Nebraska, hereinafter the "Tribe," exercising its inherent sovereign authority, adopts this Worker's Compensation Code, establishing a formal process for the administration of a Worker's Compensation program for the Tribe in a manner that is fair to both Covered Employees and the Employers of the Tribe. This Code shall be construed to promote the following purposes:

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- a. To provide medical treatment for injured Workers and fair income Benefits to injured Workers and their Dependents;
- b. To provide an administrative system for the delivery of medical and financial Benefits to injured Workers;
- c. To create a process whereby disputes over Compensation can be resolved in a fair and unbiased manner; and
- d. To restore the injured Worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable. [TCR 08-28, 08-100]

7-1202 Effective Date.

1. This Article shall supersede and replace all current policies, practices, customs and procedures relating to Compensation for any work-related Injury suffered by a Tribal Covered Employee. This Code shall become effective thirty days from the date it is passed by the Winnebago Tribal Council and shall apply to all pending claims for work injuries defined by this Code. [TCR 08-28, 08-100]

7-1203 Scope and Exclusive Remedy.

1. This Code applies to all Covered Employees and Employers of the Tribe.
2. This Code shall be the exclusive method of Compensation and the exclusive remedy for injuries sustained by Covered Employees arising out of and in the course of his or her employment with the Tribe or an Employer of the Tribe.
 - a. A Covered Employee or the Covered Employee's Dependents or legal representative, who accepts occupational Injury Benefits, waives the right to exercise any other legal remedy.
 - b. A Covered Employee or the Covered Employee's Dependents or legal representative, who exercises any other legal remedy against the Tribe or an Employer, agent, or official of the Winnebago Tribe of Nebraska, waives any right to occupational Injury Benefits.
 - c. Notwithstanding anything in this Section, an Employer that operates commercial enterprises off the Winnebago Reservation may elect to participate in a state worker's compensation program and opt out of the worker's compensation system established by this Code; such decision to participate in a state worker's compensation program shall be made by the Board of Directors or other governing body of the Employer.
3. The liability of the Tribe and Employers for all injuries arising out of and in the Course of Employment is limited to the Compensation provided to injured Covered Employees and/or Dependents pursuant to this Code or other statutory scheme should an Employer voluntarily elect to participate in a state worker's compensation program pursuant to Section 7-1203(2)(c) above, but only to the extent of the policy limits of insurance obtained by the Tribe or Employer for such purpose.
4. Such liability shall not be expanded except by amendment of this Code by official action of the Tribal Council. [TCR 08-28, 08-100]

7-1204 Sovereign Immunity.

1. Nothing in this Code shall be deemed or construed as a waiver of the Tribe's sovereign immunity from suit. The Tribe does not by enacting this Code consent to the jurisdiction of the State of Nebraska or State of Iowa's Worker's Compensation system, nor the jurisdiction of any state or federal court or administrative agency. Nor does this Code provide for judicial review by the Winnebago Tribal Court. [TCR 08-28, 08-100]

7-1205 Acknowledgment of Program and Notice to Covered Employees.

1. All Covered Employees, Workers and persons asserting a claim shall be conclusively presumed to have elected to take occupational Injury Benefits in accordance with the tenets, conditions and provisions of this program (including the schedule of Benefits) by virtue of employment with the Winnebago Tribe of Nebraska or an Employer of the Winnebago Tribe of Nebraska, exclusive of any other claims the Covered Employee may have with regards to the Injury.
2. All Covered Employees and/or persons asserting a claim for occupational Injury Benefits acknowledge that the Winnebago Tribe of Nebraska is, in fact, a federally-recognized Indian tribe and for the purposes of occupational Injury Benefits, is exercising its inherent sovereign authority. This Tribal Worker's Compensation Code applies regardless of location of Injury.
3. The Winnebago Tribe of Nebraska shall be responsible for posting a notice of this program in a conspicuous location
4. A copy of this Code will be made available to the Covered Employee or the Covered Employee's representative upon request. [TCR 08-28, 08-100]

7-1206 Definitions. In this program, unless the context otherwise requires:

1. "Administrator" means the insurance company providing coverage or its designee, including any third party administrator.
2. "Adoption" means persons adopted by decree of a recognized court of law.
3. "Average Weekly Wage" means the wage referred to in Section 7-1227.
4. "Benefit" means the findings or decision of the Administrator or designee regarding the amount of medical and lost time Benefits due to an injured Covered Employee or the Dependent of a deceased Covered Employee under the rules of the Tribal Occupational Injury Coverage Form.
5. "Child" or "Children" means the Child or Children of a Covered Employee, who are under the age of eighteen (18), including an unborn Child, a Child legally adopted prior to the Injury, a Child toward whom the Covered Employee stands in *loco parentis* (having taken on the responsibilities of a parent for someone else's Child); an illegitimate Child, and a stepchild, if such stepchild was, at the time of the Injury, a member of the Covered Employee's family and substantially dependent upon the Covered Employee for support. A Child does not include any married Children unless they are Dependents.
6. "Claimant" means the injured Covered Employee, or in the event of death of the Covered Employee, Dependents of the deceased.
7. "Course of Employment" means the employment of the Covered Employee at the time the Injury occurred. An Injury or Occupational Disease must arise out of and be in the course of their employment with the Winnebago Tribe or a Tribal Employer in order for a claim to be payable.
8. "Compensation" means lost time wages while disabled or unable to work due to a work related Injury. This also includes if the Employer is unable to accommodate modified duty work within physical restrictions assigned by the treating physician.
9. "Covered Employee" and "Worker" means:
 - a. Every person in the employment of an Employer, but does not include leased employees, independent contractors, consultants or volunteers.
 - b. Excluded as not in the employ of an Employer are consultants, independent contractors and all other persons not considered under common law to be employed by an Employer unless a written contractual agreement between the Employee and Employer and such entity provides for occupational Injury Benefits. In the event of such a contract, the contract shall be specific as to whom, when, where, and why this coverage is provided by the Employer, and all third parties and/or Covered Employees shall agree to all terms, conditions, and provisions of this program.
10. "Dependent" means the husband or wife, father or mother, Child, grandfather or grandmother, stepfather or stepmother, grandson or granddaughter, brother, sister, half-sister, half-brother, who

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- at the time of the compensable Injury that causes the Covered Employee's death, is actually and necessarily dependent in whole or in part upon the earnings of the Covered Employee.
11. "Employer(s)" or "Employer(s) of the Tribe" means the Winnebago Tribe of Nebraska, as well as any of the Tribe's enterprises, subdivisions, or other operations. The Winnebago Tribe of Nebraska, or any of its enterprises, subdivisions or other operations, is a federally-recognized Indian Tribe acting at all times pursuant to its Constitution and Bylaws in a governmental capacity.
 12. "Injury" means any physical or psychiatric Injury or illness arising from and occurring within the course and scope of their employment and includes Occupational Disease and death that is supported by medical documentation, provided that the only psychiatric injury or non-traumatic mental injury that may be considered an injury under this code is an injury that is the result of extraordinary circumstances, such that the situation is that of greater dimension than emotional strains and differences encountered by employees in that type of position daily without mental injury. Damage to or destruction of artificial member, dental appliances, teeth, hearing aids and eyeglasses/contacts, when a covered Injury is sustained. Injury is defined in two categories:
 - a. Specifically Occurring. Specifically occurring means that the Injury is a result of one incident or exposure which causes disability or need for medical treatment; or
 - b. Cumulative. "Cumulative" is defined as an Injury which is the result of repetitive mental or physical activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of the Cumulative Injury is the date upon which the Covered Employee first suffered disability and knew, or in the exercise of reasonable diligence should have known, that the disability was caused by his/her present or prior employment.
 13. "Maximum Medical Improvement" means the date after which no significant recovery from or significant lasting improvement to a personal Injury can reasonably be anticipated, based upon reasonable medical probability.
 14. "Non-Scheduled Injuries" mean injuries that result in Permanent Partial Disability or Permanent Total Disability which are not defined as Scheduled Member Injuries.
 15. "Occupational Disease" means a disease, which is causally related to the exposure of harmful conditions in the field of employment. A disease which follows from a hazard to which a Covered Employee has or would have been equally exposed outside of the occupation is not a compensable Occupational Disease.
 16. "Occupational Injury Benefits" include Weekly Benefits and medical benefits further defined as follows:
 - a. "Medical" means medical expense and other expenses associated with medical treatment reasonably related to the work Injury. Medical mileage expense will be paid at the prevailing federal mileage rate.
 - b. "Weekly Benefit" means 66 2/3 percent of the Covered Employee's Average Weekly Wage. In the case of Temporary Partial Disability, the Weekly Benefit amount is 66 2/3 percent of the difference between the Covered Employee's average gross weekly earnings at the time of the Injury and the Covered Employee's while temporarily working at the lesser paying job. The maximum Weekly Benefit payable is \$750.00. The minimum Weekly Benefit is \$50.00.
 - c. "Temporary Total Disability Benefits" (TTD Benefits) means the Weekly Benefit paid when an Injury results in three (3) or more calendar days of disability with a two (2) week retroactive period.
 - d. "Temporary Partial Disability Benefits" (TPD Benefits) means the Weekly Benefits paid if the Covered Employee returns to work at a lesser paying job, because of the Injury but before the Covered Employee reaches Maximum Medical Improvement.
 - e. "Permanent Partial Disability Benefits" (PPD Benefits) means the Weekly Benefits paid for the partial loss of a scheduled member or a non-scheduled member.

- f. “Permanent Total Disability Benefits” (PTD Benefits) means the Weekly Benefits paid for a non-scheduled Injury when the job-related Injury leaves a Covered Employee totally and permanently incapacitated. This means that the Covered Employee’s physical disability causes the Covered Employee to be unable to secure anything more than sporadic employment resulting in an income of less than 90% of their Average Weekly Wage at the time of Injury.
- g. “Death Benefits” means the Weekly Benefits paid to Dependents as a result of any fatality of the Covered Employee as a direct result of their employment.
- 17. “Scheduled Member Injuries” mean injuries that result in permanent partial impairment to the shoulder, arm, hand, thumb, finger, hip, leg, foot, toes, eyes, or ears as defined in Section 7-1229.
- 18. “Spouse” means legally married.
- 19. “Tribe” means the Winnebago Tribe of Nebraska.
- 20. “Worker’s Compensation Appeals Committee” or “Committee” means the Committee defined in Section 7-1238. [TCR 08-28, 08-100]

7-1207 Notice of Injury to Employer & Filing of Claim with Administrator.

- 1. No Compensation for an Injury under this Code shall be provided unless a notice of the Injury shall have been given to the Employer or a claim filed with the Administrator as soon as practicable, but not more than thirty (30) calendar days, after the happening thereof; PROVIDED that all disputed claims for Compensation or Benefits shall be first submitted to the Worker’s Compensation Appeals Committee.
 - a. A traumatic or Cumulative Injury or Occupational Disease is deemed to have occurred when the Covered Employee knows or has reason to know that the Injury or disease is related to the Covered Employee’s work activities, or when the Injury or disease causes the Covered Employee to be unable to work, whichever occurs first.
 - b. If the Injury incapacitates the Covered Employee, time period days will not begin to run until the incapacity ends. In cases of incapacity which continue for more than fourteen (14) days, a Spouse or Dependent may report an Injury.
 - c. All incidents resulting in death must be reported to the Administrator within a reasonable time, but not more than sixty (60) calendar days after the occurrence of death.
- 2. Notice to Employer. The notice shall be in writing and shall state in ordinary language the time, place, and cause of the Injury. It shall be signed by the person injured, or by a person in his or her behalf, or in the event of his or her death, by his or her legal representative or by a person in his or her behalf. Notice shall be served on the Employer or an agent thereof. Such service shall be made by first class mail receipt requested or by hand delivering the notice to a supervisor or manager of the Department for which the Covered Employee works.
- 3. A notice given pursuant to this Section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, or cause of the Injury, unless it is shown that it was the intention to mislead, and the Employer, or the Administrator, as the case may be, was in fact misled thereby.
- 4. The Employer shall provide Covered Employee with proper claim forms upon request and make such Claim Forms readily available to Covered Employees. Claim forms shall be filled out completely and may be faxed, mailed first-class postage pre-paid or hand-delivered to the Administrator or the Employer.
- 5. Time limits shall be calculated using calendar days. [TCR 08-28, 08-100]

7-1208 Administrator.

- 1. Administrator Responsibilities. The Administrator will act on behalf of the Employer in receiving, processing, and administering Worker’s Compensation claims, including payment of Benefits under this Code. The responsibility of the Administrator to make determinations and decisions will include, but not be limited to, the following areas:

- a. Investigation. Based upon investigation and available information, the Administrator shall make a determination of the responsibility of the Employer and will either accept or deny a claim within fourteen (14) days of first notice, and will advise the parties of that determination. The Administrator may provide the Claimant with notice prior to the expiration of the fourteen (14) day investigation phase that additional time will be required to investigate this claim, which shall not exceed forty-five (45) days from the date of first notice. The notice shall state reasons of the need for additional time, which notice shall be subject to scrutiny, and may be considered in weighing the merits, by the Appeals Board in the event of an Appeal. Within forty-five (45) days of receipt of an initial report of Injury, the Administrator shall provide the Covered Employee and Employer a written decision of its determination. The written determination shall also describe the appeals process and applicable deadlines.
- b. Medical Care. The Administrator will determine the reasonableness and necessity of medical care, and charges will determine amounts payable under this Code. The Administrator will also approve or disapprove any request for a change in primary physician, referrals to a physician, or surgical procedure. The Administrator will retain appropriate medical control for the life of the claim.
- c. Compensation Rate. Based on information supplied by Employer and/or Covered Employee, the Administrator will determine the Compensation Rate payable for Temporary Total Disability (TTD), Temporary Partial Disability (TPD), Permanent Partial Disability (PPD) and Death Benefits and the length of time such Benefits shall be paid.
- d. Dependents. The Administrator will determine the eligibility of Dependents and terms of any Dependency Benefits payable. In the event of the need to allocate Dependency Benefits between Dependents living in different households, the Administrator will make the necessary allocation, based on the obligations, legal or otherwise, of the decedent.
- e. Interpretation. The Administrator, when carrying out responsibilities in this section and when making decisions related to the interpretation of this Code, including but not limited to decisions related to the calculation of benefits, may rely on tribal case law and if none exists then the State of Nebraska worker's compensation case law. [TCR 08-28, 08-100]

7-1209 Time Limit for Filing of Claim.

1. Traumatic and Cumulative injuries: No Compensation Benefits shall be paid or awarded under this Code unless the written claim for Benefits is made within the time period indicated in Section 7-1207, from the date of the claimed Injury or onset of symptoms in the case of Cumulative Injury, but in no event longer than thirty (30) calendar days from the date Covered Employee terminates employment with an Employer. Within thirty (30) calendar days of the date of filing a written claim for Benefits, the Covered Employee must seek treatment of the Injury, or no Compensation Benefits will be payable hereunder.
2. A claim for Benefits will be precluded from being processed where more than one year has elapsed from the date of last medical treatment for a covered Injury or where more than one year has elapsed from the date after the Covered Employee has reached Maximum Medical Improvements, and the Covered Employee has not prosecuted the claim.
3. In the case of Occupational Disease, no Compensation Benefits shall be paid or awarded under this Code unless the Covered Employee or the Covered Employee's Dependents or representative files a claim within the time period specified in Section 7-1207, from the date of discovery of the disease and its probable relationship to the employment, but in no event longer than thirty (30) calendar days from the date Covered Employee terminates employment with the Employer. [TCR 08-28, 08-100]

7-1210 Medical Treatment of Covered Employee.

1. A Covered Employee shall have only one treating health care provider at a time coordinating the Covered Employee's medical care. Covered Employees do not have the opportunity to select their treating physician. All medical appointments must be approved and authorized by the Administrator except in acute emergency situations. Any change in a health care provider must be approved by the Administrator prior to engagement of a new health care provider, except in emergency situations. Services rendered by a health care provider prior to such approval shall not be the responsibility of the Employer and shall not be paid.
2. The Administrator may reduce or suspend the Benefits of a Covered Employee whose actions interfere with or prolong the Covered Employee's recovery, including where the Covered Employee fails to timely seek appropriate medical attention, or reports ongoing treatment by a treating physician when in fact such treatment is not occurring, or who fails or refuses to seek treatment with the Employer's approved medical providers.
3. If a Covered Employee has two consecutive, unexcused scheduled appointments without authorization from the Administrator or without good cause, it could result in a suspension of all Benefits.
 - a. Upon a showing of good cause by the Claimant, Benefits shall be reinstated.
 - b. A Claimant has good cause for failing to attend a scheduled appointment if the Claimant has a reason that would cause a reasonably prudent person to fail to attend the appointment under the same or similar circumstances. Failure to attend for economic reasons shall constitute good cause. [TCR 08-28, 08-100]

7-1211 Independent Medical Examination.

1. A Covered Employee entitled to Benefits shall submit to independent medical examinations at reasonable intervals and a place reasonably convenient for the Covered Employee, if and when requested by the Administrator. The Covered Employee shall likewise submit to examination(s) at reasonable intervals by any physician selected by the Worker's Compensation Appeals Committee.
2. The request for medical examination shall fix a time and place for such examination(s), having regard to the convenience of the Covered Employee, the Covered Employee's physical condition and ability to attend. The Covered Employee may have a health care provider present at the examination(s) if procured and paid for by the Covered Employee. [TCR 08-28, 08-100]

7-1212 Effect of Refusal or Obstruction of Examination or Treatment.

1. If the Covered Employee refuses to submit to the medical examination(s) or obstructs the examination(s), the Covered Employee's right to Benefits shall be suspended until the examination(s) has been made, and no Benefits shall be payable during or for such period of refusal.
2. Upon submission and or cooperation in medical exams, the Covered Employee's rights to Benefits may be reinstated. [TCR 08-28, 08-100]

7-1213 Access to Medical Records and Medical Reports.

1. A Covered Employee, by filing a claim under this program, waives any claim to doctor/patient privilege. The Authorization to Release Medical Records form must accompany the First Report of Occupational Injury form.
2. The Employer or the Administrator shall have the right to present specific questions required to evaluate the claim, and to request a full and complete report from the Covered Employee's physician or surgeon or other medical Worker at any time and in the form and detail as deemed necessary.

3. The Covered Employee shall provide the Employer or Administrator with authorization to release medical records to obtain any medical information. Failure to execute a waiver or release for such medical information will result in an automatic denial of all Benefits. [TCR 08-28, 08-100]

7-1214 Aggravation of Pre-Existing Injury.

1. Apportionment of Benefits shall be made only through medical findings concerning apportionment of ratings between a Claimant's pre-existing Injury and that portion of the Claimant's symptoms brought about because of the work related Injury. [TCR 08-28, 08-100]

7-1215 Disclosure of Pre-Existing Disabilities.

1. If requested, all Covered Employees of an Employer or Covered Employee of Employers shall disclose any pre-existing physical or mental disorder or disability known to the Covered Employee that would prevent them from performing in a reasonable and safe manner the activities involved in the position applied for or in which they work.
2. Following such request, failure by the Covered Employee to disclose, prior to commencement of employment, a physical condition which prevented the Covered Employee from safely performing the work for which the Covered Employee was hired and which was a substantial contributing factor to the Injury shall exclude the Covered Employee from coverage under the provisions of this Coverage form. [TCR 08-28, 08-100]

7-1216 False Statement or Representation in Employment Application.

1. Any person who makes a false statement or representation in an employment application shall be denied Benefits if:
 - a. The Covered Employee knowingly and willfully made a false representation as to his or her physical condition; and
 - b. The Employer relied upon the false representation and the reliance was a substantial factor in hiring; and
 - c. There must have been a causal connection between false representation and Injury. [TCR 08-28, 08-100]

7-1217 Benefits Mistakenly Awarded by Administrator.

1. The Covered Employee shall repay such Compensation approved by the Administrator that the Covered Employee is not entitled to and is received because of clerical error, mistaken identity, innocent misrepresentation mistakenly acted upon, or any other circumstance of a similar nature and not induced by fraud.
 - a. Recoupment may be made from any future payments due the Covered Employee on any Workers Benefit claim. Or if no future payments are due to the Covered Employee, a payment plan shall be arranged between the Administrator and Covered Employee.
 - b. The Administrator or Employer must make a claim for such repayment or recoupment within one year of when the Compensation is paid or the repayment shall be barred.
 - c. The Covered Employee may appeal a claim for recoupment to the Worker's Compensation Appeals Committee.
 - i. The Worker's Compensation Appeals Committee may waive, at its discretion and in whole or in part, the amount of such timely claim for recoupment where the recovery would be against equity and good conscience. [TCR 08-28, 08-100]

7-1218 Benefits Mistakenly Awarded by the Worker's Compensation Appeals Committee.

1. In order to set aside, modify or change an award made by the Worker's Compensation Appeals Committee that was made as a result of a clerical error, mistaken identity, innocent representation mistakenly acted upon, or any other circumstance of a similar nature and not induced by fraud, a party must make such a claim to the Worker's Compensation Appeals Committee within one year of the Committee issuing the award. [TCR 08-28, 08-100]

7-1219 Benefits Induced by Proven Fraud.

1. Whenever the payment of Compensation to a Worker that was been approved either by the Administrator or by the Worker's Compensation Appeals Committee has been induced by fraud proven through a court of law, a claim for recoupment may be made from any future payments due the Worker on any Worker Benefit claim. If no future payments are due to the Covered Employee and the Employer or Administrator has obtained a judgment against the Covered Employee for recoupment of Benefits paid, such judgment may be enforced by the applicable laws of the court that issued it. [TCR 08-28, 08-100]

7-1220 Right to Occupational Injury Benefits.

1. When personal Injury is caused to a Covered Employee by accident or Occupational Disease, arising out of and in the course of his or her employment, such Covered Employee shall receive Compensation therefore from his or her Employer if the Covered Employee was not willfully negligent at the time of receiving such Injury. [TCR 08-28, 08-100]

7-1221 Employer's Liability to Medical, Surgical and Hospital Services.

1. The Employer is liable for all reasonable medical , surgical, and hospital services, including plastic surgery but not cosmetic surgery when the Injury has caused disfigurement, dental appliances, supplies, prosthetic devices, and medicines, when needed, which are required by the nature of the Injury and which will relieve pain or promote and hasten the Covered Employee's restoration to health and employment, and includes damages to or destruction of artificial members, dental appliances, teeth, and hearing aids, and eyeglasses, but, in the case of dental appliances, hearing aids, or eyeglasses, only if such damage or destruction resulted from an accident that also caused personal Injury entitling the Covered Employee to Compensation for disability or treatment, not to exceed the regular charge made for such services in similar cases. [TCR 08-28, 08-100]

7-1222 Selection of Treating Physician by Administrator.

1. The Administrator shall notify the Covered Employee, following a receipt of a claim for Benefits, of the Covered Employee's treating physician.
2. Once selection of the initial physician is made by the Administrator, the Employer or Covered Employee shall not change the initial selection of physician made pursuant to this subsection unless such a change is agreed to by the both the Covered Employee and the Administrator or is ordered by the Worker's Compensation Appeals Committee. [TCR 08-28, 08-100]

7-1223 Return to Work Form.

1. The Return to Work Recommendation Record is required for all medical appointments. This form must be obtained prior to the appointment and returned to the Employer prior to the start of the next scheduled shift. [TCR 08-28, 08-100]

7-1224 Waiver by Covered Employee Invalid.

1. No agreement by a Covered Employee to waive his or her rights to Compensation under this Code shall be valid. [TCR 08-28, 08-100]

7-1225 Other Benefits Not Factors.

1. No savings or insurance of the injured Covered Employee or any contribution made by him or her to any Benefit fund or protective association independent of this Worker's Compensation Code shall be taken into consideration in determining the Compensation to be paid thereunder; nor shall Benefits derived from any other source other than those paid or caused to be paid by the Employer as herein provided be considered in fixing Compensation under such Code. [TCR 08-28, 08-100]

7-1226 Defenses to Liability Denied.

1. In all cases brought under this Code it shall not be a defense:
 - a. That the Covered Employee was negligent, unless it shall also appear that such negligence was willful, or that the Covered Employee was in a state of intoxication;
 - b. That the Injury was caused by the negligence of a fellow Covered Employee; or
 - c. That the Covered Employee had assumed the risks inherent in, or incidental to, or arising from the failure of the Employer to provide and maintain safe premises. All defenses associated with assumption of the risk are hereby abolished. [TCR 08-28, 08-100]

7-1227 Average Weekly Wage.

1. The Average Weekly Wage is calculated by the average of the Covered Employee's gross wages earned during the twenty-six (26) calendar weeks preceding the date of Injury, not including unreported tips and/or bonuses. Overtime is not to be considered in computing wages unless it is regular and frequent throughout the year. The twenty-six weeks prior to the date of Injury are presumed representative, regardless of the wages earned. In the event that a Covered Employee is employed for less than twenty-six (26) consecutive calendar weeks immediately preceding the date of Injury, the Average Weekly Wage shall be determined using the gross wages divided by the actual number of weeks the Covered Employee worked during those weeks. If the Covered Employee's work week is fewer than five days per week or if there is an irregular number of days worked per week, the total number of days that a Covered Employee actually performed any of the duties of employment in the last 26 weeks is to be divided by the number of weeks in which the Covered Employee actually performed such duties, multiplied by the Covered Employee's daily wage. [TCR 08-28, 08-100]

7-1228 Maximum and Minimum Weekly Benefits.

1. The Maximum Weekly Benefits payable under this Code shall be \$750.00 per week.
2. The Minimum Weekly Benefits payable under this Code shall be \$50.00. [TCR 08-28, 08-100]

7-1229 Compensation; Schedule; Total, Partial, and Temporary Disability; Injury to Specific Parts of the Body; Amounts and Duration of Payments.

1. The following schedule of Compensation is hereby established for injuries resulting in disability:
 - a. For total disability, the Compensation during such disability shall be sixty-six and two-thirds percent of the wages received at the time of Injury, but such Compensation shall not be more than the maximum Weekly Benefit specified in Section 7-1228 nor less than

the minimum Weekly Benefit specified in Section 7-1228, except that if at the time of Injury the Covered Employee receives wages of less than the minimum Weekly Benefit specified in Section 7-1228, then he or she shall receive the full amount of such wages per week as Compensation. Nothing in this subdivision shall require payment of Compensation after disability shall cease;

- b. For disability partial in character, except the particular cases mentioned in subdivision (c) of this Section, the Compensation shall be sixty-six and two-thirds percent of the difference between the wages received at the time of the Injury and the earning power of the Covered Employee thereafter, but such Compensation shall not be more than the maximum Weekly Benefit specified in Section 7-1228. This Compensation shall be paid during the period of such partial disability but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which Compensation was paid for such total disability;
- c. For disability resulting from permanent Injury of the classes listed in this subdivision, the Compensation shall be in addition to the amount paid for temporary disability, except that the Compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable. For disability resulting from permanent Injury of the following classes, Compensation shall be:
 - i. For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks.
 - ii. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks.
 - iii. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks.
 - iv. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks.
 - v. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks.
 - vi. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and Compensation shall be for one-half of the periods of time above specified, and the Compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified.
 - vii. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb, except that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.
 - viii. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks.
 - ix. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks.
 - x. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and Compensation shall be for one-half of the periods of time above specified.
 - xi. The loss of more than one phalange shall be considered as the loss of the entire toe.
 - xii. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks.
 - xiii. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks.
 - xiv. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks.

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- xv. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks.
 - xvi. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks.
 - xvii. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks.
 - xviii. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks.
 - xix. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.
- d. In any case in which there is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, Compensation Benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of Benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to subdivision (a) of this Section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the Compensation shall bear such relation to the amounts named in such subdivision as the disabilities bear to those produced by the injuries named therein.
- e. If, in the Worker's Compensation Appeals Committee's discretion, Compensation Benefits payable for a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, resulting from the same accident or illness, do not adequately compensate the Covered Employee for such loss or loss of use and such loss or loss of use results in at least a thirty percent loss of earning capacity, the Worker's Compensation Appeals Committee shall, upon request of the Covered Employee, determine the Covered Employee's loss of earning capacity consistent with the process for such determination under subdivision (a) and (b) of this Section, and in such a case the Covered Employee shall not be entitled to Compensation under this subdivision.
- f. If the Employer and the Covered Employee are unable to agree upon the amount of Compensation to be paid in cases not covered by the schedule, the amount of Compensation shall be settled by the Worker's Compensation Appeals Committee. Compensation under this subdivision shall not be more than the maximum Weekly Benefit specified in Section 7-1228 nor less than the minimum Weekly Benefit specified in Section 7-1228, shall not be more than 300 weeks, and the 300 week maximum shall be reduced by the number of weeks that the Employee has already received benefits. If at the time of the Injury the Covered Employee received wages of less than the minimum Weekly Benefit specified in Section 7-1228, then he or she shall receive the full amount of such wages per week as Compensation.
- g. For disability resulting from permanent disability, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the Covered Employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek

of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the Covered Employee.

- h. The Covered Employee shall be entitled to Compensation from his or her Employer for temporary disability while undergoing physical or medical rehabilitation and while undergoing vocational rehabilitation whether such vocational rehabilitation is voluntarily offered by the Employer. [TCR 08-28, 08-100]

7-1230 Exclusions from Coverage.

- 1. The following shall be excluded from coverage under this program:
 - a. Claims due to tobacco use or second-hand smoke in the workplace shall not be compensable.
 - b. Claims due to injuries caused by silica or silica related dust shall not be compensable.
 - c. Claims due to injuries or disease caused by mold shall not be compensable. [TCR 08-28, 08-100]

7-1231 Waiting Period for Benefits.

- 1. No Compensation shall be allowed for the first three (3) calendar days of disability, except as provided in Section 7-1221, but if disability extends beyond the period of three (3) calendar days, Compensation shall begin on the fourth calendar day of disability, except that if such disability continues for two (2) weeks or longer, Compensation shall be computed from the date disability began. For purposes of this Section, a partial day of disability shall be deemed a calendar day of disability. [TCR 08-28, 08-100]

7-1232 Injuries Causing Death.

- 1. Injury Causing Death. If an Injury sustained by an Covered Employee results in the Covered Employee's death within two (2) years following the Injury, and the deceased Covered Employee leaves one or more Dependents dependent upon his or her earnings for support at the time of Injury, the Compensation, subject to Section 7-1228, shall not be more than the maximum Weekly Benefit nor less than the minimum Weekly Benefit specified in Section 7-1228; PROVIDED, that if at the time of Injury the Covered Employee receives wages of less than the minimum Weekly Benefit specified in Section 7-1228, then the Compensation shall be the full amount of such wages per week, payable in the amount and to the person enumerated in Section 7-1232(2).
- 2. Definitions for Purposes of Benefits associated with Compensation of Death. For purposes of defining Dependents associated with receiving Compensation of Death Benefits or burial expenses, the following shall apply:
 - a. The following persons shall be conclusively presumed to be dependent for support upon a deceased Covered Employee:
 - i. A wife upon a husband with whom she is living or upon whom she is actually dependent at the time of his Injury or death;
 - ii. A husband upon a wife with whom he is living or upon whom he is actually dependent at the time of her Injury or death; and
 - iii. A Child or Children under the age of nineteen years, or over such age, if physically or mentally incapable of self-support, or any Child nineteen years of age or over who is actually dependent, or any Child between nineteen and twenty-five years of age who is enrolled as a full-time student in any accredited educational institution.

- b. The term Child shall include a posthumous Child, a Child legally adopted or for whom Adoption proceedings are pending at the time of death, an actually Dependent Child in relation to whom the deceased Covered Employee stood in the place of a parent for at least one year prior to the time of death, an actually Dependent stepchild, or a Child born out of wedlock. Child shall not include a married Child unless receiving substantially entire support from the Covered Employee. Grandchild shall mean a Child, as above defined, of a Child, as above defined, except that as to the latter Child, the limitations as to age in the above definition do not apply.
- c. Brother or sister shall mean a brother or sister under nineteen years of age, or nineteen years of age or over and physically or mentally incapable of self-support, or nineteen years of age or over and actually dependent. The terms brother and sister shall include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by Adoption but shall not include married brothers or married sisters unless receiving substantially entire support from the Covered Employee.
- d. Parent shall mean a mother or father, a stepparent, a parent by Adoption, a parent-in-law, and any person who for more than one year immediately prior to the death of the Covered Employee stood in the place of a parent to him or her, if actually dependent in each case.
- e. Actually dependent shall mean dependent in fact upon the Covered Employee and shall refer only to a person who received more than half of his or her support from the Covered Employee and whose dependency is not the result of failure to make reasonable efforts to secure suitable employment. When used as a noun, the word Dependent shall mean any person entitled to Death Benefits. No person shall be considered a Dependent, unless he or she be a member of the family of the deceased Covered Employee, or bears to him or her the relation of widow, widower, lineal descendant, ancestor, brother, or sister. Questions as to who constitute Dependents and the extent of their dependency shall initially be determined as of the date of the accident to the Covered Employee, and the Death Benefit shall be directly recoverable by and payable to the Dependent or Dependents entitled thereto or their legal guardians or trustees. No Dependent of any injured Covered Employee shall be deemed, during the life of such Covered Employee, a party in interest to any proceeding by him or her for the enforcement or collection of any claim for Compensation, nor as respects the compromise thereof by such Covered Employee. [TCR 08-28, 08-100]

7-1233 Computation of Payments of Death Benefits.

- 1. When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the Covered Employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the Covered Employee. [TCR 08-28, 08-100]

7-1234 Death Benefit Compensation Schedule.

- 1. Compensation under Section 7-1233 shall be payable in the amount and to the following persons subject to the maximum limits specified in Section 7-1228.
- 2. If there is a widow or widower of the deceased and no Children of the deceased, as defined in Section 7-1232(2), to such widow or widower, sixty-six and two-thirds percent of the Average Weekly Wage of the deceased, as computed in Section 7-1233, during widowhood or widowerhood.

3. One year's Death Benefits in one-lump sum shall be payable to a widow or widower upon remarriage and thereafter Death Benefits shall cease.
Two years' Death Benefits in one lump-sum shall be payable to a widow or widower upon reaching the age of 65.
4. To the Children, if there is no widow or widower, sixty-six and two thirds percent of such wage for one Child, and fifteen percent for each additional Child, divided among such Children, share and share alike.
5. The income Benefits payable on account of any Child under this Section shall cease when he or she dies, marries, or reaches the age of nineteen, or when a Child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent reaches the age of twenty-five. A Child who originally qualified as a Dependent by virtue of being less than nineteen years of age may, upon reaching age nineteen, continue to qualify if he or she satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.
6. If there is no widow or widower and no Children, then to each parent, if actually dependent, thirty-three and one-third percent of such wage for each parent.
7. If there is no widow or widow, Children, or parent, then to each grandchild, if actually dependent, sixty-six and two-thirds percent of such wage for one grandchild, and fifteen percent for each additional grandchild, divided among such grandchildren, share and share alike.
8. If there is no widow or widower, Children, parents, or grandchildren, then to brothers and sisters, and grandparents, if actually dependent, twenty-five percent of such wage to each such Dependent. If there should be more than one such Dependent, the total Death Benefits payable on account of such Dependents shall be divided share and share alike.
9. The income Benefits of each beneficiary under subdivisions (7), (8), and (9) of this Section shall be paid until he or she, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of nineteen, or ceases to be actually dependent.
10. With respect to the beneficiaries under subdivisions (7), (8), and (9) a person ceases to be actually dependent when his or her income from all sources exclusive of such Death Benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a find of dependency. In any event, if the present annual income of an actual Dependent person including Worker's Compensation Death Benefits at any time exceeds the total annual support received by the person from the deceased Covered Employee, the Worker's Compensation Benefits shall be reduced so that the total amount of income is no greater than such amount of annual support received from the deceased Covered Employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency.
11. Upon the cessation of income Benefits under this Section to or on account of any person, the income Benefits of the remaining persons entitled to benefits for the unexpired part of the period during which their income Benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income Benefits at the time of the decedent's death. [TCR 08-28, 08-100]

7-1235 Death of Covered Employee Ends Disability Payments.

1. The death of an injured Covered Employee prior to the expiration of the period within which he or she would receive such disability payment shall be deemed to end such disability, and all liability for the remainder of such payment which he or she would have received in case he or she had lived shall be terminated, but the Employer shall thereupon be liable for the following Death Benefit in lieu of any further disability indemnity: if the Injury so received by the Covered

Employee was the cause of his or her death and such deceased Covered Employee leaves Dependents as hereinbefore specified, the Death Benefits shall be sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under this Code to such deceased Covered Employee, to make the total Compensation for the Injury and death equal to the full amount which such Dependents would have been entitled to receive under Section 7-1233, in case the accident had resulted in immediate death; and made under such Section. No deduction shall be made for the amount which may have been paid for medical and hospital services and medicines or for the expenses of burial. If the Covered Employee dies from some cause other than the Injury, there shall be no liability for Compensation to accrue after his or her death. [TCR 08-28, 08-100]

7-1236 Burial Expenses.

1. Upon the death of a Covered Employee, resulting through personal injuries as herein defined, whether or not there be Dependents entitled to Compensation, the reasonable expenses of burial, not exceeding six thousand dollars, without deduction of any amount previously paid or to be paid for Compensation or for medical expenses, shall be paid to his or her Dependents, or if there be no Dependents, then reasonable expenses of burial, not to exceed not to exceed six thousand dollars and the expenses provided for medical and hospital services for the deceased, together with any accrued Benefits up to the time of death, and shall be payable to the estate of the deceased. [TCR 08-28, 08-100]

7-1237 Waiting Time Penalty.

1. Except as provided, all amounts of Compensation payable under this Code shall be payable periodically in accordance with the methods of payment of wages of the Covered Employee at the time of the Injury or death. Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Worker's Compensation Appeals Committee, except for any award or judgment against the Tribe in excess of the policy limits of the Employer's Worker's Compensation insurance provider. Such award in excess is not compensable under this Code or subject to any penalty. Such payments shall be sent directly to the person entitled to Compensation or his or her designated representative. [TCR 08-28, 08-100]

7-1238 Worker's Compensation Appeals Committee.

1. The Worker's Compensation Appeal Committee shall be comprised of five (5) members. The Tribal Council shall appoint the five (5) individuals to serve on the Appeals Board to hear issues on appeal and make any necessary final determination related to compensability of a Work Injury, medical care or charges, extent of Disability, Dependency, or any other issue that may arise in an appeal filed under this Code. The Appeal Board will be appointed on an as-needed basis and on a case-by-case basis. The Appeals Board will hear issue(s) de novo (anew, over again from the beginning). Three (3) members will constitute a quorum.
2. Composition of the Committee. The members of the Appeals Board shall include one member of the Tribe, who may or may not be a member of the Tribal Council, two non-managerial Covered Employees of the Tribe, one Committee member of the Committee who works within the Human Resources Department or Finance Department of the Tribe, and one member who has knowledge in labor law who is not a Tribal Covered Employee.
3. The Worker's Compensation Appeal Committee shall receive reasonable expenses related to participation on the Appeals Board and such Compensation shall be paid for by the Tribe. Expenses for training in the area of occupational Injury Benefits shall be paid by the Winnebago Tribe of Nebraska. [TCR 08-28, 08-100]

7-1239 Procedures for Disputed Claims.

1. In the event of any dispute over the amount of payment of Benefits, delinquent payments, denial of a claim, suspension or termination of Benefits payable under this program, the Claimant shall have the right to appeal the disputed claim as follows:
 - a. Claimant must request reconsideration by the Administrator. The reconsideration request must be made in writing, specifying what action is in dispute, why the Claimant disagrees with the Administrator's action and the desired result. Any additional supporting documentation or evidence to be considered must be submitted by the Claimant with the reconsideration request unless an extension of time to submit such evidence is specifically requested in the reconsideration request. The request for reconsideration must be filed within thirty (30) calendar days of the date of the Administrator's adverse action or decision. A reconsideration request is deemed filed upon mailing by regular or certified mail. Failure to request reconsideration within that time period is deemed a waiver of any further rights of appeal herein.
 - b. Upon denial of the reconsideration request or an adverse decision of the reconsideration request, the Claimant may request a hearing before the Worker's Compensation Appeals Committee. [TCR 08-28, 08-100]

7-1240 Hearing Request Procedures.

1. The hearing request must be made in writing and shall contain a plain, concise statement of the disputed action of the Administrator, the date of the action and the Claimant's reasons for appeal. Claimants should make their request as clear and complete and possible, and hearing requests shall include the following items and be completed in the following manner:
 - a. All issues which the Claimant intends to bring before the Worker's Compensation Appeals Committee. Any issues not raised in the request for hearing application by either party are deemed waived.
 - b. Any new supporting documentation or evidence to be considered must be submitted by the Claimant with the hearing request unless an extension of time to do so is specifically requested in the hearing request.
 - c. A request for hearing must be filed by mail or hand-delivered to Director Of Human Resources for the Covered Employee's Employer, within fourteen (14) calendar days of the date of the Administrator's adverse decision of a Covered Employee's reconsideration request. Mailed requests shall be sent to: the Worker's Compensation Appeals Committee, Winnebago Tribe of Nebraska, P.O. Box 687, Winnebago, NE 68071.
 - d. A hearing request is deemed filed upon mailing by regular or certified mail.
 - e. Failure to request a hearing within the above time period shall be deemed a waiver of any further right of appeal herein.
2. The burden of proof, throughout the above appeal process, rests on the Covered Employee to prove that the Covered Employee sustained an Injury which is directly related to the employment and that the Covered Employee is entitled to the Benefits claimed under this program.
3. A Claimant may be represented in an appeal by any person. Where a Claimant is successful in overturning an adverse decision by the Administrator or is successful in obtaining an increase in benefits, which were previously denied by the Administrator, reasonable attorneys fees shall be allowed to the Claimant. Attorney's fees shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney fees be charged to medical providers. When attorney fees are awarded by the Workers Compensation Appeals Committee, such awards are charged to the Employer and are payable within thirty (30) days of the Committee issuing such decision.
4. Hearing procedures before the Worker's Compensation Appeals Committee:

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- a. Upon filing of a request for hearing before the Worker's Compensation Appeals Committee, a copy of the hearing request and all supporting evidence submitted by the Covered Employee shall be sent by the Employer to the Administrator within fourteen (14) calendar days of receipt of the hearing request. The Administrator, as the adverse party in this proceeding, shall have fourteen (14) calendar days to file a written response with the Worker's Compensation Appeals Committee, with a copy to the Covered Employee. Any issues not raised at the time of hearing by either party are deemed waived.
 - b. Any member of the Worker's Compensation Appeals Committee having any personal interest in any claim or appeal presented before the Committee shall be disqualified for cause. A Claimant shall have the right to challenge for cause any member of the Committee and in the event that disqualification(s) results in less than a quorum, alternate members shall be temporarily appointed to serve by the Tribal Council.
 - c. A Claimant or the Claimant's representative shall have the right, in all matters presented before the Worker's Compensation Appeals Committee, to cross-examine all witnesses and to review all evidence of any nature, as may relate to the matter under consideration.
 - d. The Worker's Compensation Appeals Committee, the Administrator and the Claimant shall have the right to cross-examine all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and Injury.
 - e. The Worker's Compensation Appeals Committee shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner that is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of the Winnebago Tribe of Nebraska Worker's Compensation Code. Either party may request development of further medical evidence. The Administrator has the right to designate an examining medical expert at the Administrator's expense. Failure of the Covered Employee to comply with any reasonable request for examination will result in dismissal of Covered Employee's appeal with prejudice.
5. A full and complete record shall be kept of all proceedings held before the Worker's Compensation Appeals Committee for investigation, appeals, or the taking of testimony by an electronic recording means. A party may request the proceeding be reported by a certified stenographer at the requesting party's expense.
 6. The Worker's Compensation Appeals Committee shall convene as necessary, but in no event will a Covered Employee be deprived of a hearing for more than forty-five (45) days after the Worker's Compensation Appeals Committee's receipt of written hearing request, unless a request for extension of time has been filed by a party.
 7. All parties shall have the right to request a continuance of the hearing after it has first convened for the purpose of further developing evidence.
 8. The Worker's Compensation Appeals Committee shall act only by majority vote, in writing and with at least three (3) members present and voting. The Worker's Compensation Appeals Committee may utilize Tribally-approved attorneys as legal counsel. A written decision will be issued by the Worker's Compensation Appeals Committee within thirty (30) calendar days of the hearing, which will become final and binding on the parties.
 9. During the pendency of the appeal, Claimant shall continue to receive all Benefits approved by the Administrator in its original written decision, but shall not receive any new Benefits claimed in the appeal. Payments made to Claimant during the pendency of an appeal shall not be recouped or recovered by the Administrator or the Employer.
 10. Any award agreed to by the Claimant for Benefits under this program shall constitute a full and final settlement and all Benefits shall cease upon settlement, except where the award provides for other than a lump sum settlement. If other than a lump sum settlement, the terms of the award agreement shall apply. [TCR 08-28, 08-100]

7-1241 Experts.

1. The Covered Employee may engage the services of medical or vocational experts for purposes of a disputed claim, at the Covered Employee's cost, which is not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such experts will be considered in a disputed case. [TCR 08-28, 08-100]

7-1242 Liability of Third Person to Injured Covered Employee; Subrogation Powers.

1. When a third person is liable to the Covered Employee or to the Dependents for the Injury or death of the Covered Employee, the Employer shall be subrogated to the right of the Covered Employee or to the dependants against such third person. The recovery by such Employer shall not be limited to the amount payable as Compensation to such Covered Employee or Dependents, but such Employer may recover any amount which such Covered Employee or his or her Dependents should have been entitled to recover. Any recovery by the Employer against such third person, in excess of the Compensation paid by the Employer after deducting the expenses and making such recovery, shall be paid forthwith to the Covered Employee or to the Dependents and shall be treated as an advance payment by the Employer on account of any future installments of Compensation. [TCR 08-28, 08-100]

7-1243 Third Party Claim Procedures and Notice.

1. Before making a claim or bringing suit against a third person by the Covered Employee or his or her personal representative or by the Employer or his or her Worker's Compensation insurer, thirty days notice shall be given to the other potential parties, unless such notice is waived in writing, of the opportunity to join in such claim or action and to be represented by counsel.
 - a. After the expiration of thirty days, for failure to receive notice or other good cause shown, the court before which the action is pending shall allow either party to intervene in such action, and if no action is pending then the court in which it could be brought shall allow either party to commence such action.
 - b. Each party shall have an equal voice in the claim and the prosecution of such suit, and any dispute arising shall be passed upon by the court before which the case is pending, and if no action is pending then by the court in which the action could be brought.
2. If either party makes a claim or prosecutes a third-party action without giving notice to the other party, the party bringing the claim and prosecuting such action shall not deduct expenses or attorney's fees from the amount payable to the other party. [TCR 08-28, 08-100]

7-1244 Third Party Claims & Attorney Fees.

1. If the Covered Employee or his or her personal representative or the Employer or his or her Worker's Compensation insurer join in prosecuting such claim and are represented by counsel, the reasonable expenses and the attorney's fees shall be, unless otherwise agreed upon, divided among such attorneys as directed by the court before which the case is pending, and if no action is pending then by the court in which the action could be brought.
2. If either party after received notice under Section 7-1243 fails, by and through his or her attorney, to join in the third-party claim or suit such party waives any and all claims or causes of action for improper prosecution of the third-party suit or inadequacy of a settlement made in accordance with Section 7-1245. The party bringing the claim or prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney's fees. Such expenses and attorney's fees shall be prorated (1) to the amount payable to the Employer or his or her Worker's Compensation insurer under the right of subrogation established in Section 7-1242 and (2) to the amount in excess of such amount

payable to the Employer or his or her Worker's Compensation insurer under the right of subrogation. Such expenses and attorney's fees shall be apportioned by the court, which heard the claim, between the parties as their interests appear at the time of such recovery.

3. Nothing in this Worker's Compensation Code shall be construed to deny the right of an injured Covered Employee or of his or her personal representative to bring suit against such third person in his or her own name or in the name of the personal representative based upon such liability, but in such event an Employer having paid or paying Compensation to such Covered Employee or his or her Dependents shall be made a party to the suit for the purpose of reimbursement, under the right of subrogation, of any Compensation paid. [TCR 08-28, 08-100]

7-1245 Third Party Claims; Settlement Requirements.

1. A settlement of a third-party claim under the Winnebago Tribe Worker's Compensation Code is void unless:
 - a. Such settlement is agreed upon in writing by the Covered Employee or his or her personal representative and the Worker's Compensation insurer of the Employer, if there is one, and if there is no insurer, then by the Employer, or
 - b. In the absence of such agreement, the court before which the action is pending determines that the settlement offer is fair and reasonable considering liability, damages, and the ability of the third party person and his or her liability insurance carrier to satisfy any judgment.
2. If an Covered Employee or his or her personal representative or the Employer or his or her Worker's Compensation insurer do not agree in writing upon distribution of the proceeds of any judgment of settlement, the court before which the action was heard, or if no action was filed then the court in which it could be brought, shall order a fair and equitable distribution of the proceeds of any judgment or settlement. [TCR 08-28, 08-100]

7-1246 Awards.

1. Any awards issued by the Worker's Compensation Appeals Committee are strictly limited to the amount of per accident or per occurrence coverage as provided in the Employer's Worker's Compensation Insurance Policy. In no event shall the Committee grant an award in excess of the policy limits. [TCR 08-28, 08-100]

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TITLE 7
ARTICLE 13
FLOOD DAMAGE PREVENTION CODE

As adopted December 15, 2010
[TCR #11-29]

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7-1301 Findings of fact.

1. The flood hazard areas of the Winnebago Tribe of Nebraska are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards, which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

7-1302 Statement of purpose. It is the purpose of this Article to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money and costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard;
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
9. To protect Tribal resources.

7-1303 Methods of reducing flood losses. In order to accomplish its purposes, this Article includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage; and
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

7-1304 Definitions. Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

1. "Appeal" means a request for a review of the Administrator's interpretation of any provision of this Article or a request for a variance.
2. "Area of Special Flood Hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.
3. "Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters A or V.
4. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
5. "Critical Facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.
6. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.
7. "Elevated Building" means for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.
8. "Existing Construction" means (for the purpose of determining rates) structures for which the "start of construction" commenced before the effective date of the Flood Insurance Rate Map ("FIRM") or before January 1, 1975, for FIRM's effective before that date. "Existing construction" may also be referred to as "existing structures."
9. "Existing Manufactured Home Park or Subdivision" means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.
10. "Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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11. “Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters and/or
 - b. The unusual and rapid accumulation of runoff of surface waters from any source.
12. “Flood Fringe” is that area of the floodplain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).
13. “Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
14. “Flood Insurance Study” means the official report provided by the Federal Insurance Administration that includes flood profiles and the water surface elevation of the base flood.
15. “Floodplain” means any land area susceptible to being inundated by water from any source (see definition of “flooding”).
16. “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
17. “Freeboard” means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size of flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.
18. “Highest Adjacent Grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of construction.
19. “Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Article found at Section 5.2-1(2).
20. “Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”
21. “Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
22. “New Construction” means structures for which the “start of construction” commenced on or after the effective date of this Article.
23. “New Manufactured Home Park or Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.
24. “Overlay District” means a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.
25. “Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.
26. “Recreational Vehicle” means a vehicle which is:
 - a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;
 - c. Designed to be self-propelled or permanently towable by a light duty truck; and
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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27. “Special Flood Hazard Area” is the land in the floodplain within a community subject to 1% or greater chance of flooding in any given year.
28. “Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
29. “Structure” means a walled and roofed building including a gas or liquid storage tank that is principally above ground.
30. “Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
31. “Substantial Improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
- a. Before the improvement or repair is started; or
 - b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- The term does not, however, include either:
- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
 - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
32. “Variance” means a grant of relief from the requirements of this Article which permits construction in a manner that would otherwise be prohibited by this Article.
33. “Violation” means a failure of a structure or other development to be fully compliant with this Article.
34. “Water Dependent” means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

7-1305 Land to which this Article applies. This Article shall apply to all areas of special flood hazards within the jurisdiction of the Winnebago Tribe of Nebraska.

7-1306 Basis for establishing the area of special flood hazard. The areas of special flood hazard identified by a Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for the Winnebago Tribe of Nebraska,” dated January 6, 2010, as amended, with an accompanying Flood Insurance Rate Map (FIRM), as amended, are hereby adopted by reference and declared to be a part of this Article. The Flood Insurance Study is on file at the office of the Winnebago Tribal Environmental Protection Department. The best available information for flood hazard area

identification as outlined in Section 7-1313(2) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under Section 7-1313(2).

7-1307 Penalties for non-compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Article and other applicable regulations. Violations of the provisions of this Article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute an offense under Title 3 of the Winnebago Tribal Code. Any person who violates this Article or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Administrator from taking such other lawful action as is necessary to prevent or remedy any violation.

7-1308 Abrogation of greater restrictions. This Article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

7-1309 Interpretation. In the interpretation and application of this Article, all provisions shall be considered as minimum requirements and be liberally construed in favor of the Tribe.

7-1310 Warning and disclaimer of liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Winnebago Tribe of Nebraska, any officer or employee thereof, for any flood damages that result from reliance on this Article or any administrative decision lawfully made hereunder.

7-1311 Establishment of development permits.

1. Development permit required: A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 7-1306. The permit shall be for all structures including manufactured homes, as set forth in the “Definitions,” and for all development including fill and other activities, also as set forth in the “Definitions.”
2. Application for development permit: Application for a development permit shall be made on forms furnished by the Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
 - Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
 - a. Elevation in relation to mean sea level to which any structure has been floodproofed;
 - b. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 7-1316(2); and
 - c. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

7-1312 Administration. The Tribal Flood Plain Administrator (“Administrator”) shall be responsible for administration and implementation of this Article in accordance with its provisions.

7-1313 Duties and responsibilities of the Administrator. Duties of the Tribal Flood Plain Administrator shall include, but not be limited to:

1. Permit Review:
 - a. Review all development permits to determine that the permit requirements of this Article have been satisfied;
 - b. Review all development permits to determine that all necessary permits have been obtained from those Federal agencies from which prior approval is required;
 - c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 7-1318(1) are met.
2. Use of other base flood data: When base flood elevation data has not been provided in accordance with Section 7-1306, basis for establishing the area of special flood hazard, the Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 7-1316, Specific standards for flood hazard reduction, and 7-1318 Floodways.
3. Information to be obtained and maintained:
 - a. Where base flood elevation data is provided through the Flood Insurance Study or required as in Section 2, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 - b. For all new or substantially improved floodproofed structures where the base flood elevation data is provided through the Flood Insurance Study or as required in Section 2:
 - i. verify and record the actual elevation (in relation to mean sea level), and
 - ii. maintain the flood proofing certifications required in Section 7-1311(2)(C).
 - c. Maintain for public inspection all records pertaining to the provisions of this Article.
4. Alteration of watercourses:
 - a. Notify adjacent communities prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
 - b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
5. Interpretation of FIRM boundaries: Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 7-1314.

7-1314 Variance procedures.

1. Appeal Board
 - a. The Appeal Board shall hear and decide appeals and requests for variances from the requirements of this Article. The Appeal Board shall be comprised of the Tribal Council.
 - b. The Appeal Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Administrator in the enforcement or administration of this Article.
 - c. Those aggrieved by the decision of the Administrator, or any taxpayer, may appeal such decision to the Appeal Board as provided herein.
 - d. In passing upon such applications, the Appeal Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Article, and:
 - i. the danger that materials may be swept onto other lands to the injury of others;
 - ii. the danger to life and property due to flooding or erosion damage;

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- iii. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - iv. the importance of the services provided by the proposed facility to the community;
 - v. the necessity to the facility of a waterfront location, where applicable;
 - vi. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - vii. the compatibility of the proposed use with existing and anticipated development;
 - viii. the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - ix. the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - x. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - xi. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- e. Upon consideration of the factors of Section 1.D. and the purposes of this Article, the Tribal Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Article.
 - f. The Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.
2. Conditions for variances
- a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 7-1314.D. have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.
 - b. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places without regard to the procedures set forth in this Section.
 - c. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
 - d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - e. Variances shall only be issued upon:
 - i. a showing of good and sufficient cause;
 - ii. a determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - iii. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
 - f. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

- g. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Section 7-1314(2)(A), and otherwise complies with Sections 7-1315(1) and (2) of the General standards for flood hazard reduction.
- h. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

7-1315 General standards for flood hazard reduction. In all areas of special flood hazards, the following standards are required:

1. Anchoring
 - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - b. All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA’s “Manufactured Home Installation in Flood Hazard Areas” guidebook for additional techniques).
2. Construction Materials and Methods
 - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
 - c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
3. Utilities
 - a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 - b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
 - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
4. Subdivision Proposals
 - a. All subdivision proposals shall be consistent with the need to minimize flood damage.
 - b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
 - c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
 - d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).
5. Review of Building Permits: Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (Section 7-1313(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe

from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

7-1316 Specific standards for flood hazard reduction. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 7-1306, Basis for Establishing the Areas of Special Flood Hazard or Section 7-1313(2), Use of Other Base Flood Data, the following provisions are required:

1. Residential Construction
 - a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot above the base flood elevation.
 - b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - ii. The bottom of all openings shall be no higher than one foot above grade.
 - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
2. Nonresidential Construction: New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water.
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 7-1313(3)(B).
 - d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in Section 7-1316(1)(B).
 - e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below).
3. Manufactured Homes
 - a. All manufactured homes to be placed or substantially improved on sites:
 - i. Outside of a manufactured home park or subdivision;
 - ii. In a new manufactured home park or subdivision;
 - iii. In an expansion to an existing manufactured home park or subdivision; or
 - iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood; shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

- b. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or that are not subject to the above manufactured home provisions be elevated so that either:
 - i. The lowest floor of the manufactured home is elevated one foot above the base flood elevation, or
 - ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.
- 4. Recreational Vehicles: Recreational vehicles placed on sites are required to either:
 - a. Be on the site for fewer than 180 consecutive days;
 - b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - c. Meet the requirements of Section 7-1316(3) above and the elevation and anchoring requirements for manufactured homes.

7-1317 Before regulatory floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

7-1318 Floodways. Located within areas of special flood hazard established in Section 7-1306 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- 1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- 2. If Section 7-1318(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 7-1315 through 1318.

7-1319 Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or more above the level of the base flood elevation (100-year) at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

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TITLE 7

ARTICLE 14

WINNEBAGO POLLUTION CONTROL CODE

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7-1400 Citation. This Article may be cited as the Winnebago Pollution Control Code of 1998.

7-1401 Definitions.

1. "Air contaminant," "air contamination." Air contaminant or air contamination means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, or other gaseous, fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.
2. "Air pollution" means the presence in the outdoor atmosphere of any air contaminant or combination thereof in such quantity, of such nature and duration, and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.
3. "Emission" means a release or discharge outside a man-made enclosed facility of any air, water, or land contaminant, solid or hazardous waste, land pollution water pollution, or air pollution, or any combination thereof/
4. "Emission facility" means any structure, work, equipment, machinery, device, apparatus, or other means whereby an emission is caused to occur.
5. "Hazardous waste" means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.
6. "Land pollution" means the presence in or on the land of any waste in such quantity, of such nature and duration, and under such condition as would affect injuriously any waters of the state, create air contaminants or cause air pollution.
7. "Noise" means any sound not occurring in the natural environment, including, but not limited to, sounds emanating from aircraft and highways, and industrial, commercial, and residential sources.

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8. “Noise pollution” means the presence in the outdoor atmosphere of any noise or combination of noises in such quantity, at such levels, of such nature and duration or under such conditions as could potentially be injurious to human health or welfare, to animal or plant life, or to property, or could interfere unreasonably with the enjoyment of life or property.
9. “Person” means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity.
10. “Potential emission facility” or “storage facility” means any structure, work, equipment, device, apparatus, tank, container, or other means for the storage or confinement, either stationary or in transit, of any substance which, if released or discharged from such structure, work equipment, device, apparatus, tank, container, or other means of storage, might cause air pollution endangering human health, air pollution damaging property, obnoxious odors constituting a public nuisance, water pollution endangering human health, water pollution damaging property, land pollution endangering human health or land pollution damaging property.
11. “Sludge” means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air contaminant treatment facility, or any other waste having similar characteristics and effects.
12. “Solid waste” means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include hazardous waste; earthen fill, boulders, rock; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material as defined by The Atomic Energy Act of 1954, as amended.
13. “Water contaminant” means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, or particulate substance differing in composition from or exceeding in concentration the natural components of water but does not include hazardous waste; earthen fill, boulders, rock; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material as defined by The Atomic Energy Act of 1954, as amended.
14. “Water pollution” means the presence in an outdoor body of water of any size or in any underground spring, aquifer, well, or other underground body of water of any water contaminant or combination thereof in such quantity, of such nature and duration, and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

7-1402 Pollution emissions and abatement.

1. Emission notification required. A person who controls the source of an emission must notify the Winnebago Tribal Council immediately of excessive or abnormal unpermitted emissions that:
 - a. may cause air pollution endangering human health;
 - b. may cause air pollution damaging property;
 - c. cause obnoxious odors constituting a public nuisance;

- d. may cause water pollution endangering human health;
 - e. may cause water pollution damaging property;
 - f. may cause land pollution endangering human health; or
 - g. may cause land pollution damaging property.
2. If a person who controls the source of an emission has knowledge of an event that has occurred and that will subsequently cause an emission described in paragraph (a), the person must notify the Winnebago Tribal Council when the event occurs.

7-1402.1 Abatement required. A person who is required to notify the Winnebago Tribal Council under Section 7-1401 must take immediate and reasonable steps to minimize the emissions or abate the emission and obnoxious odors caused by the emissions.

7-1403 Exemption. The following are exempt from the requirements of Sections 7-1401 and 7-1402:

1. emissions resulting from the activities of public fire services or law enforcement services;
2. emissions from motor vehicles;
3. emissions permitted under Section 7-1405.

7-1404 Use of notification. Any notice submitted under Section 7-1401 is not admissible in any proceeding as an admission of causation.

7-1405 Notification and approval of potential emission facility.

1. No person may operate a potential emissions facility within the exterior boundaries of the Winnebago Reservation without obtaining prior written permission of the Winnebago Tribal Council.
2. Any person who desires to obtain permission pursuant to Section 7-1405(a) to construct or operate a potential emissions facility must provide sufficient information, including but not limited to plans, designs, construction drawings, environmental assessments, blueprints, environmental permits, and pollution control plans, so that the Winnebago Tribal Council may determine whether it is in the best interests of the Tribe and Tribal members to allow the construction and operation of such facility on the reservation.
3. Any person who desires to obtain permission pursuant to Section 7-1405(a) to construct or operate a potential emissions facility shall first deposit with the Tribe an amount sufficient for an adequate independent environmental assessment of the proposed potential emissions facility. The amount of the deposit shall be determined by the Winnebago Tribal Council. Any sums remaining after payment for the assessment shall be refunded to the applicant.

7-1406 Livestock feedlots. Permit.

1. No person may operate a livestock feedlot with a capacity of 500 animal units or more without obtaining prior written permission of the Winnebago Tribal Council.
2. Notice of application for livestock feedlot permit. A person who applies to the Winnebago Tribal Council for a permit to construct or expand a feedlot with a capacity of 500 animal units or more shall, not later than ten business days after the application is submitted, provide notice to each resident and each owner of real property within 5,000 feet of the perimeter of the proposed feedlot. The notice may be delivered by first class mail, in person, or by the publication in a newspaper of general circulation within the affected area and must include information on the type of livestock and the proposed capacity of the feedlot.
3. A livestock feedlot with a capacity of 500 animal units is deemed a potential emissions facility.

7-1407 Cause of action for abandonment of hazardous waste on property of another.

1. If an owner of property on which containers of hazardous waste or material which is hazardous waste is abandoned by another disposes of the waste in compliance with all applicable laws and at the owner's expense, the property owner is entitled to recover from any person responsible for the waste that was abandoned damages of twice the costs incurred for removal, processing, and disposal of the waste, together with the costs and losses that result from the abandonment and Court costs. If, before the waste is properly disposed of, the property owner knows the identity and location of a person responsible for the waste that was abandoned, the property owner is not entitled to recover against that person under this Section unless:
 - a. The property owner requests in writing that the person responsible for the waste that was abandoned remove and properly dispose of the abandoned waste and allows the responsible person 30 days after the request is mailed to remove the waste;
 - b. The property owner allows the person responsible for the waste that was abandoned reasonable access to the owner's property to remove the waste within the 30-day period after giving the notice; and
 - c. The person responsible for the waste that was abandoned fails to remove all of the waste within the 30-day period.
2. A person who is purchasing property on a contract for deed is a property owner for the purposes of this Section.

7-1408 Livestock odor. Any person owning, operating or managing any type of livestock facility with more than 200 animal units must:

1. Monitor and identify potential livestock facility violations of the generally accepted ambient air quality standards for hydrogen sulfide, using a protocol for responding to complaints regarding feedlot odor and its hydrogen sulfide component, including the appropriate use of portable monitoring equipment that enables monitoring staff to follow plumes;
2. When livestock production facilities are found to be in violation of generally accepted ambient hydrogen sulfide standards, take appropriate actions necessary to ensure compliance, utilizing appropriate technical assistance.

7-1409 Authority to issue penalty orders.

1. Any person may file a complaint with the General Counsel of the Winnebago Tribe of Nebraska for any violation of this Article. The General Counsel may initiate litigation in the Winnebago Tribal Court seeking any remedy allowed by this Article or allowed by any common law theory of liability.
2. The Winnebago Tribal Court, in addition to any remedy allowed by any other statutory provision, or any other remedy allowed by law, may issue an order requiring violations to be corrected and assessing monetary penalties for violations of this Title.

7-1410 Amount of penalty; considerations.

1. The Winnebago Tribal Court may issue an order assessing a penalty of not less than \$100 nor more than up to \$10,000 for each violation of this Article. For purposes of this Section, each month or portion thereof in which there is a violation constitutes a separate violation.
2. In determining the amount of a penalty the Winnebago Tribal Court may consider:
 - a. the willfulness of the violation;
 - b. the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the Tribe;
 - c. the history of past violations;

- d. the number of violations;
 - e. the economic benefit gained by the person by allowing or committing the violation; and
 - f. other factors as justice may require, if the Winnebago Tribal Court specifically identifies the additional factors in the Court's order.
3. Contents of order. An order assessing a civil penalty under this Section shall include:
- a. a concise statement of the facts alleged to constitute a violation;
 - b. a reference to the section of the statute that has been violated;
 - c. a statement of the amount of the civil penalty to be imposed and the factors upon which the penalty is based; and
 - d. a statement of the person's right to review of the order and appeal to the Winnebago Supreme Court.

7-1411 Corrective order.

- 1. In addition to the penalties in Section 7-1409, the Tribal Court may issue an order assessing requiring the violations cited in the order to be corrected within 30 calendar days from the date the order is received.
- 2. The person to whom the order was issued shall provide information to the Winnebago Tribal Court before the 31st day after the order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken. The Tribal Court shall determine whether the violation has been corrected and notify the person subject to the order of the Court's determination.

7-1412 Definitions. Applicability. For the purposes of Sections 7-1412 to 7-1413, the following terms have the meanings given:

- 1. "PCB" means the class of organic compounds known as polychlorinated biphenyls and includes any of several compounds produced by replacing one or more hydrogen atoms on the biphenyl molecule with chlorine. PCB does not include chlorinated biphenyl compounds that have functional groups attached other than chlorine.
- 2. "Person" has the meaning specified in Section 7-1401(i).

7-1413 PCB; prohibited use.

- 1. Certificate of exemption. No person shall use, possess, sell, purchase or manufacture PCB or any product containing PCB unless the use, possession, sale, purchase or manufacture of PCB or products containing PCB is specifically exempted after public hearing by the Winnebago Tribal Council.
- 2. Labels required. No person shall add PCB in the manufacture of any new item, product or material, nor shall any person sell any new item, product or material to which PCB has been added unless the PCB or products containing PCB are conspicuously labeled to disclose the presence of PCB and the concentrations of PCB.
- 3. Penalties. Violations of this Section and shall be subject to the provisions of Section 17-1409.

7-1414 Definitions. Scope. As used in Sections 7-1414 to 7-1420, the terms defined in this Section have the meanings given them.

- 1. "Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is used to contain or dispense regulated substances, and that is not an underground storage tank.
- 2. "Agency" means the pollution control agency.

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3. “Installer” means a person who places, constructs, or repairs an aboveground or underground tank, or permanently takes an aboveground or underground tank out of service.
4. “Operator” means a person in control of, or having responsibility for, the daily operation of an underground storage tank.
5. “Owner” means a person who owns an underground storage tank and a person who owned it immediately before discontinuation of its use.
6. “Regulated substance” means:
 - a. a hazardous material listed in Code of Federal Regulations, Title 49, section 172. 101; or
 - b. petroleum, including crude oil or a fraction of crude oil that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.
7. “Release” means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into the environment.
8. “Underground storage tank” means any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected to them, is ten percent or more beneath the surface of the ground.

7-1415 Exemptions. Sections 7-1416, 7-1417, and 7-1418 do not apply to:

1. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tanks of 1, 100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;
3. Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline S, duty Act of 1968, United States Code, Title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, Title 49, chapter 29;
4. Surface impoundments, pits, ponds, or lagoons;
5. Storm water or waste water collection systems;
6. Flow-through process tanks;
7. Tanks located in an underground area, including basements, cellars, mineworkings, drifts, shafts, or tunnels, if the storage tank is located upon or above the surface of the floor;
8. Septic tanks;
9. Tanks used for storing liquids that are gaseous at atmospheric temperature and pressure.

7-1416 Monitoring.

1. By September 1, 1999, all above ground tanks of 2,000 gallons or more used for storage and subsequent resale of petroleum products must be equipped with:
 - a. a gauge in working order that shows the current level of product in the tank; or
 - b. an audible or visual alarm which alerts the person delivering fuel into the tank that the tank is within 100 gallons of capacity.
2. In lieu of the equipment specified in paragraph (a), the owner or operator of a tank may use a manual method of measurement which accurately determines the amount of product in the tank and the amount of capacity available to be used. This information must be readily available to anyone delivering fuel into the tank prior to delivery. Documentation that a tank has the available capacity for the amount of product to be delivered must be transmitted to the person making the delivery.

7-1417 Contents labeled.

1. By December 1, 1999, all aboveground tanks governed by this Section must be numbered and labeled as to the tank contents, total capacity, and capacity in volume increments of 500 gallons or less.
2. Piping connected to the tank must be labeled with the product carried at the point of delivery and at the tank inlet. Manifoldded delivery points must have all valves labeled as to product distribution.

7-1418 Environmental protection requirements. A person may not install an underground storage tank unless the tank:

1. is installed according to requirements of the American Petroleum Institute Bulletin 1615 (November 1979) and all manufacturer's recommendations;
2. is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release of any stored substance;
3. is constructed to be compatible with the substance to be stored; and
4. is constructed and installed in a manner conforming with Environmental Protection Agency guidelines and regulations.

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TITLE 7
ARTICLE 15
LANDLORD TENANT RELATIONS

As adopted February 1, 2010
[TCR #10-53]

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7-1501 Applicability. This Article shall govern relationships between landlords and tenants as defined in this Article on the lands of the Winnebago Tribe of Nebraska Reservation and over all property within the Winnebago Tribe of Nebraska Reservation whether private or public real property. This includes relations between the Winnebago Tribal Housing Program and its tenants. This Article shall apply only to residential property.

7-1502 Definitions.

1. “Abandonment” means that the tenant vacates the dwelling without providing the notice required pursuant to the rental agreement *or any actions or absence of the tenant from the dwelling that manifests the tenant’s intention to no longer occupy the dwelling.*
2. “Code” means the Winnebago Tribal Code.
3. “Controlled substance” shall have the same meaning as in Winnebago Tribal Code Section 3-801(4).
4. “Forcible entry and detainer” means a suit brought in the Tribal Court pursuant to Title 2, Article 13 of the Winnebago Tribal Code to terminate a tenant’s interest in real property and/or to evict any person from occupancy of real property and return possession of the same to the landlord/lessor. Such a suit may also demand money damages for rent owed and damage to the landlord’s property.
5. “Lessee” or “tenant” means any person who occupies real property under a rental agreement or other agreement with a lessor for the purpose of maintaining a residence, as defined in this Article.
6. “Lessor” or “landlord” means a person or entity, including the Winnebago Tribal Housing Program, who has an interest in real property which for a limited time has been leased or rented to another for the purpose of maintaining a residence.
7. “Nuisance” means the creation or maintenance on real property of a condition or the performance of an act which:
 - a. Unreasonably threatens the health or safety of other tenants, their guests, neighboring land users or the public generally; or
 - b. unreasonably and substantially interferes with the ability of other tenants or neighboring property users to enjoy the reasonable use and occupancy of their tenancy or property.
8. “Rental agreement” means any agreement, written, oral or by practice of the parties pursuant to which the tenant uses or occupies the real property of the lessor as a residence. If such agreement is written, any separately stated written rules or terms and conditions of use and occupancy referenced in the agreement shall be considered part of the “rental agreement.”

9. “Tribal Court” means the Winnebago Tribal Court as established by the laws of the Tribe or other entity as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.
10. “Tribe” means the Winnebago Tribe of Nebraska.
11. “Waste” means spoilage or destruction of land, buildings, gardens, trees or other improvements owned by a lessor and committed by a tenant or a tenant’s guest which result in economic injury to the lessor’s interest in the property.

7-1503 Rental Agreement. The rental agreement shall be the primary source of rights and obligations between the landlord and the tenant. All terms of the rental agreement shall be enforceable through the appropriate action brought in the Tribal Court to the extent that the terms do not contradict the provisions of this Article.

7-1504 Security Deposit. A rental agreement may require a tenant to provide a security deposit to landlord to offset damages to landlord’s property caused by tenant or his guests and to cover unpaid rent under the rental agreement. A rental agreement may not provide for a security deposit in excess of one and one-half months’ rent as provided for in the rental agreement.

7-1505 Eviction for Possession of a Controlled Substance. A provision in a rental agreement for the eviction of a tenant found to be in possession of, using, selling, or distributing a controlled substance shall be fully enforceable.

7-1506 Utilities and Waste Disposal. Which party to the rental agreement shall be responsible for payment of utilities and waste disposal shall be determined solely by agreement of the parties.

7-1507 Termination. A rental agreement may provide for a specified term of occupancy and procedures for termination. A rental agreement that provides for a specified term of occupancy by the tenant shall become a month-to-month tenancy upon expiration of the specified term. Unless otherwise stated in a lease agreement, a month-to-month tenancy is terminable by either party upon thirty (30) days notice to the other. Where the rental agreement does not provide for a specified term, the tenancy shall be month-to-month and subject to termination by either party upon thirty (30) days notice to the other.

7-1508 Rights and Obligations of Landlord.

1. Landlord Rights
 - a. To be paid rent or money due under the rental agreement as provided for therein.
 - b. To adopt rules and regulations for the use and occupancy of a dwelling which are designed to promote the convenience, safety or welfare of occupants, preserve the property from waste or improper use, make a fair distribution or use of services and facilities for those who occupy dwellings or otherwise preserve the peace and quiet enjoyment of other tenants.
 - c. To have access to the dwelling at reasonable time of day for maintenance, repairs, decoration, alteration or improvements, to inspect the premises, supply necessary or agreed to services, or to show the dwelling perspective tenants after a notice to vacate has been served.
 - d. Upon an abandonment of a Winnebago Tribal Housing property, the Winnebago Tribal Housing Program shall have the right to seize whatever property of the tenant or other occupant that remains in the dwelling. If rent or costs incurred to repair damages remain outstanding after the tenant’s security deposit is applied, the tenant fails to pay all outstanding amounts owed and does not claim his/her property within thirty (30) days, the Winnebago Tribal Housing Program may sell the property to cover outstanding rent owed or damages to the property that occurred during the tenant’s occupancy of the

dwelling. Any proceeds collected from the sale of property under this Section shall be the property of Winnebago Tribal Housing.

2. Landlord Obligations

- a. The landlord has a duty to maintain dwellings in a condition fit for human occupancy, including, but not limited to:
 - i. maintaining safe heating equipment that heats the entire dwelling;
 - ii. maintaining all foundations, floors, walls, windows, door, ceilings, and roofs in a reasonably weatherproof, water tight and rodent proof condition;
 - iii. maintaining plumbing systems, including the provision of a reasonable amount of hot water;
 - iv. maintaining all electrical systems;
 - v. if the dwelling has an air conditioning unit provided by the landlord, then the landlord is responsible for maintenance of the air conditioning unit. However, the landlord has no obligation to provide an air conditioning unit.
- b. Upon delivery of the dwelling to the tenant, the landlord must ensure that the dwelling is clean and sanitary and reasonably free from rodents or insect infestation.
- c. Landlord shall provide twenty-four (24) hours notice to tenant before entering the dwelling as provided for in Section 7-1508(a)(3). Emergency circumstances may allow the landlord to access a dwelling without notice. Additionally, a landlord may provide standing notice to tenants of regularly scheduled maintenance.
- d. The landlord has the duty to defend tenant's right to occupancy under the lease against third parties.

7-1509 The Rights and Obligations of Tenant.

1. Tenant Rights

- a. Each of landlord's obligations as set forth in Section 7-1508(b) creates a reciprocal right in the tenant.

2. Tenant Obligations

- a. To pay rent as provided for in the rental agreement.
- b. To abide by reasonable rules and terms and conditions of use and occupancy as provided for in the rental agreement.
- c. To notify landlord of damage or disrepair to the dwelling in a timely fashion. For purposes of this Section, "timely" shall be determined by the need for repair to avoid further damage or waste to the property or to protect the health or safety of the tenant or other persons.
- d. The tenant may not sublease or otherwise assign his interest in the dwelling unless specifically allowed to do so by the rental agreement or by the written permission of the landlord. No third party may use a purported sublease or assign from a tenant as a defense in an action brought by the landlord for possession of the dwelling unless such sublease or assign is allowed as provided for in this Section.

7-1510 Landlord Remedies.

1. A landlord's remedies are enforced by bringing an action for forcible entry and detainer pursuant to the Code Title 2, Article 13.
2. Grounds for Eviction of Tenant and Repossession of the Property by Landlord:
 - a. Failure to pay rent as provided for in the rental agreement. Upon tenant's first such failure, landlord must provide notice to the tenant and allow the tenant at least five (5) days from the date of the notice to cure the non-payment before bringing a forcible entry

- and detainer action. Upon subsequent failures, landlord may immediately bring a forcible entry and detainer action without notice to tenant or an opportunity to cure.
- b. Breach of rental agreement. Upon tenant's first such breach, landlord must provide notice to the tenant and allow the tenant at least three (3) days from the date of the notice to cure the breach before bringing a forcible entry and detainer action. Upon any subsequent breach during the tenancy, landlord may immediately bring a forcible entry and detainer action without notice to tenant or an opportunity to cure.
 - c. Violation of this Act. Upon tenant's first such violation, landlord must provide notice to the tenant and allow the tenant at least three (3) days from the date of the notice to cure the violation before bringing a forcible entry and detainer action. Upon any subsequent violation during the tenancy, landlord may immediately bring a forcible entry and detainer action without notice to tenant or an opportunity to cure.
 - d. Creating or maintaining a nuisance. Before bringing an unlawful detainer action, the landlord must provide notice to the tenant and allow at least three (3) days from the date of the notice for the tenant to cure any nuisance created or maintained by the tenant before bringing a forcible entry and detainer action. No notice or period to cure need be provided where:
 - i. notice and period to cure has already been provided for the same type of nuisance on a prior occasion during the previous twelve (12) months;
 - ii. notice and period to cure has already been provided on any two other nuisances during the previous twelve (12) months;
 - iii. the nuisance creates a substantial risk of death or serious bodily injury to any person;
 - iv. the nuisance involves the possession, consumption, sale or distribution of a controlled substance.
 - e. Holdover. Where a tenant remains in possession of a dwelling after the tenancy has terminated pursuant to Section 7-1507, the tenant shall be deemed a trespasser on the property and shall be subject to immediate removal by the proper law enforcement authority and subject to prosecution for trespass.
 - f. Abandonment. Where a tenant has abandoned the dwelling, the landlord may immediately bring a forcible entry and detainer action for ejectment of the tenant in possession of the dwelling.
3. Money Damages. Landlord may seek money damages in any action for forcible entry and detainer for outstanding rent owed or damages to landlord's property caused by tenant or tenant's guests.

7-1511 Tenant Remedies.

1. Condition of Property. Where the landlord fails to meet his obligations pursuant to Section 7-1508(b)(1) & (2) of this Article, the tenant may withhold from rent the amount of money required to make the dwelling fit for human occupancy or to clean and sanitize the dwelling upon initial delivery by the landlord or cure any rodent or insect infestation. The tenant must provide notice to the landlord and allow the landlord five (5) days to cure the failure to meet the obligation. Where the landlord's failure to meet the obligation creates an unsafe or unsanitary condition, or otherwise renders the dwelling uninhabitable, the tenant only need allow forty eight (48) hours for the landlord to cure before taking action to correct the condition.
2. Failure to Provide Notice. Where the landlord fails to meet his obligation pursuant to Section 7-1508(b)(3) of this Article, landlord shall be liable to tenant in the amount of \$100.00 for the first such violation and \$200.00 for each subsequent violation during the tenant's occupancy of the dwelling. Tenant may withhold the amount from rent owed or bring an action in Tribal Court to collect the damages. The penalties provided for in this subsection shall not apply to the Tribe, including the Winnebago Tribal Housing Program.

3. Right to Occupancy. Where landlord fails to meet his obligation pursuant to Section 7-1508(b)(4) and the tenant incurs legal fees or costs to protect his right to occupy the property, the landlord is liable for the tenant's legal fees incurred. The amount of attorney fees incurred by tenant in defending his/her right to occupy the property may be withheld by tenant from rent owed. Attorney fees collectable by tenant pursuant to this Section shall not exceed the total amount of money still owed by the tenant to the landlord pursuant to the rental agreement. Where the tenancy is month-to-month, the total amount recoverable shall not exceed one month's rent. The Tribe, including the Winnebago Tribal Housing Program, shall not be liable for attorney fees under this subsection.
4. Cause of Action. Should the balance of rent owed by the tenant be insufficient to fully offset any money owed to tenant by landlord pursuant to this Section, tenant shall have a cause of action against landlord to collect the money owed. Nothing in this Section shall be deemed to be a waiver of the Tribe's or any Tribal entity's sovereign immunity from suit.

7-1512 Notification.

1. To Tenant. When landlord is required to provide a notification to tenant under this Article, the notification shall:
 - a. be in writing;
 - b. specify which section of the rental agreement or this Article that the tenant is violating or the time at which landlord will be entering the residence, such as the case may be;
 - c. provide what action must be taken to correct the violation or the purpose of landlord's entry into the residence, such as the case may be;
 - d. provide the time in which the correction of a violation must occur before legal action may be taken;
 - e. be posted on front door to tenant's dwelling *or at a common entrance to a multi-dwelling building.*
2. To Landlord. When tenant is required to provide notice to landlord under this Article, the notification shall:
 - a. be in writing;
 - b. generally set forth tenant's grievance and requested relief;
 - c. be presented to the same place and person to which tenant remits rent under the rental agreement.

Landlord may require that requests for repairs be submitted on a form provided to tenant by landlord.

7-1513 Winnebago Tribal Housing Committee.

1. There is hereby created the Winnebago Tribal Housing Committee. The Committee members shall be appointed by the Tribal Council in accordance with Bylaws approved by the Tribal Council.
2. The members of the Committee shall be appointed by the Tribal Council. Subject to approval by the Tribal Council, the Committee shall adopt Bylaws as appropriate to fulfill its duties set forth in this Article. Where the Winnebago Tribal Housing Committee Bylaws are inconsistent with this Article, this Article shall control.
3. The Winnebago Tribal Housing Committee shall be an informal forum for tenants of the Winnebago Tribal Housing Program to address concerns about their residence and public areas of Winnebago Tribal Housing Program properties. The Winnebago Tribal Housing Committee may make recommendations to the Winnebago Tribal Housing Program to address tenant concerns.

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4. Upon a tenant's request, the Winnebago Tribal Housing Committee may also review lease or Winnebago Tribal Housing Program rule violations assessed against a tenant to ensure that an assessed lease or rule violation is supported by articulated, objective and documented facts. Any tenant request made under this Section must be delivered in writing to the Winnebago Tribal Housing Committee no later than forty-eight (48) hours after the Winnebago Tribal Housing Program provides notice to the tenant of the assessed violation and must include any written documentation that the tenant wishes the Winnebago Tribal Housing Committee to consider. The Winnebago Tribal Housing Committee shall determine whether the assessed violation is based upon articulated, objective and documented facts and submit its decision and basis for its decision in writing to the Winnebago Tribal Housing Program within five (5) days of having received the tenant's request for review. The Winnebago Tribal Housing Program shall accept the Winnebago Tribal Housing Committee decision regarding lease or rule violations and take appropriate action in accordance with such decision.
5. Any submission by the Winnebago Tribal Housing Committee shall not act to stay a proceeding brought by the Winnebago Tribal Housing Program in the Tribal Court based upon the alleged violation or accumulated violations by the tenant. However, if the Winnebago Tribal Housing Program rescinds the subject violation upon reconsideration and that violation was a necessary element of the cause then under consideration in the Tribal Court, the Winnebago Tribal Housing Program shall move to dismiss the Tribal Court action. The tenant may also file the appropriate motion seeking dismissal based upon the rescinded violation. Additionally, if a tenant has already been removed from possession of a dwelling and the Winnebago Tribal Housing Program later rescinds the violation that was the basis for removal of the tenant, the Winnebago Tribal Housing Program shall take all practical action to reinstate the removed tenant. The Winnebago Tribal Housing Program shall not be liable for any damages based upon a rescinded violation.
6. The Winnebago Tribal Housing Committee shall meet once a month at a location on the Winnebago Reservation. This meeting shall be open to all Winnebago Tribal Housing Program tenants. The time and place of the meeting shall be provided to Winnebago Tribal Housing Program tenants by posting a notice in a public place at each of the Winnebago Tribal Housing Program's properties no less than forty-eight (48) hours before the meeting. The Winnebago Tribal Housing Committee is not a public entity, and its meetings may be closed to the general public.
7. Decisions of the Winnebago Tribal Housing Program shall only be appealable to the Winnebago Tribal Court. Appeals to the Winnebago Tribal Court shall be *de novo*.